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Dollar Tree Stores, Inc.

**UNITED STATES DISTRICT COURT**  
**NORTHERN DIVISION OF CALIFORNIA**

MIGUEL A. CRUZ, and JOHN D.  
HANSEN,, individually and on behalf of  
others similarly situated,

Plaintiffs,

vs.

DOLLAR TREE STORES, INC.,  
Defendant.

Case Nos.: 07-2050 SC  
07-4012 SC

**DECLARATION OF  
ROBERT CRANDALL, MBA**

ROBERT RUNNINGS, individually and  
on behalf of others similarly situated,

Plaintiffs,

vs.

DOLLAR TREE STORES, INC.,  
Defendant.

1 I, ROBERT CRANDALL, declare:

2  
3 1. I am making this declaration based of my own, first-hand knowledge (except as to matters  
4 declared on information and belief, of which I have been informed and do believe) and, if called  
5 upon to do so, could and would competently testify to the following.

6  
7 **SECTION 1 - ASSIGNMENT**

8  
9 2. I was retained by counsel for defendant Dollar Tree Stores ("Dollar Tree") to review the  
10 available data for the purpose of assessing whether the data indicates that there is wide variation  
11 in experiences across the Dollar Tree Store Managers ("SMs") who make up the present class. I  
12 have also been asked to review the available data, declarations, and deposition testimony and  
13 comment upon whether the data collected to date supports the hypothesis that common training,  
14 policies, practices, and procedures has led to uniformity in how SMs allocate their work time  
15 between managerial and non-managerial duties. In addition, I have been asked to discuss the  
16 business model to address the questions of whether the operating model would be expected to  
17 lead to variability in managerial activities, and whether the nature of the operating model led to  
18 the expectation that class members uniformly spent less than 50% of their time performing  
19 managerial duties. I have been asked to comment upon statistical issues that arise when one seeks  
20 to use representative testimony if the circumstances demonstrate that there is wide variability in  
21 experiences across class members and that a portion of the class meets the test for the exemption  
22 and a portion does not. More specifically, 1) How does wide variability in the percentage of time  
23 allocated to managerial duties impact the ability to utilize random sampling approaches and  
24 statistical techniques to predict whether a given individual non-testifying class member is above  
25 or below the 50% line; 2) How does wide variability in the percentage of time allocated to  
26 managerial duties impact the ability to utilize information derived from a random sample of class  
27 members to make extrapolations regarding the class wide average managerial time and the  
28

1 proportion of class members who spent more than 50% of their time performing managerial  
2 duties; 3) Whether the data and information available indicate that SMs spend uniform or  
3 variable amounts of time performing managerial duties; 4) Whether the data and information  
4 indicate that SMs uniformly spend more or less than 50% of their time on managerial duties;

5  
6 3. What follows is organized into several sections. Section II presents my qualifications;  
7 Section III presents an introduction and summary of opinions; Section IV presents analysis of the  
8 variation in responses to the Certification of Duties forms completed by class members, Section V  
9 presents a validation analysis of the Certification of Duties forms, Section VI discusses statistical  
10 issues that arise when there is variation in experiences across class members, Section VII  
11 provides an detailed synopsis of a formal survey study conducted by Resolution Economics in  
12 2002-2003 regarding how SMs allocated their time across various in-store tasks, Section VIII  
13 discusses how to test whether systematic policies, practices, and procedures govern SM behavior  
14 and how operational factors would be expected to result in variability in how SMs allocate their  
15 time among the various tasks they perform, and Section IX presents conclusions.

16  
17 **SECTION II – QUALIFICATIONS**  
18

19 4. I am a Partner at Resolution Economics LLC, a firm whose activities include conducting  
20 labor studies, performing economic and statistical analyses, and providing complex data analysis  
21 in connection with litigation and non-litigation issues. I have been retained in an expert or  
22 consulting capacity in more than 200 class-action matters alleging wage and hour violations under  
23 FLSA and other state laws. In connection with this work, I have been involved in numerous  
24 projects where the objective was collecting and analyzing data related to the work activities of  
25 class members through the use of scientific surveys, observation studies, and other data studies. I  
26 have conducted many such studies in “big box” retail environments. I have also been asked to  
27 perform similar studies outside of the litigation context. In addition, I am frequently asked to  
28

1 review and comment upon the surveys and other studies conducted by other experts. Finally, my  
 2 work has often called for analysis of survey data in the context of labor economics issues. I hold  
 3 an M.B.A. from Loyola Marymount University, and a B.A. degree in History from the University  
 4 of Southern California. I have been qualified as an expert witness in both Federal and State  
 5 Courts. My resume and a list of testimony, reports, and affidavits provided over the past four  
 6 years are attached to this report as Attachment A.

### 8 **SECTION III - INTRODUCTION AND SUMMARY OF OPINIONS**

- 10 • **Variability in Experiences Limits the Use of Representative Testimony and**  
 11 **Statistical Extrapolation of Findings to Non-Testifying Class Members**

12 5. As noted in my assignment above, I have been asked to review the available data and  
 13 information to assess whether the data indicates that there is wide variability in class member  
 14 experiences. From a statistical perspective, the question of whether there is wide variability in  
 15 experiences presents the significant question in any class action matter where the trial plan calls  
 16 for representative testimony from a select few to make decisions about the experiences of the  
 17 remainder of the class. For example, suppose that every manager performed tasks A, B, and C  
 18 such that they all had a uniform and exactly identical experience. If that were the case, then any  
 19 single manager could be selected at random and his or her experience would be representative of  
 20 the group's experience. On the other hand, what would happen if there were four SMs and each  
 21 manager had completely different experiences with little to no overlap? If Manager 1 testified  
 22 that he spent his workday completing tasks A, B, and C, his experience would not be  
 23 representative of Manager 2 who, if asked, would testify that she spent her workday performing  
 24 tasks X, Y, and Z. Things get further complicated if we add Manager 3 who spent his workdays  
 25 performing tasks A, Y, and Z and Manager 4 who spent her workday performing tasks X, B, and  
 26 C respectively. Thus, SMs 3 and 4 have completely different experiences from each other;  
 27 however, each has some overlap with SMs 1 and 2. As evidenced by the example, each of the  
 28

1 SMs performed tasks that were within the universe of all tasks SMs could perform; yet, none had  
2 experiences that were the same. Thus, if we were to select at random only one manager to testify  
3 about his or her experience, whatever information was obtained would not be relevant for the  
4 other three. Indeed, given this example, one would have to question all four SMs individually in  
5 order to make determinations regarding what they did.

6  
7 6. The level of complexity increases if we add the concept that tasks A, B, C are classified as  
8 exempt and tasks X, Y, and Z are classified as non-exempt. If that were the case, then Manager 1,  
9 who only did the exempt tasks A, B, C would be exempt, Manager 2, who only did the non-  
10 exempt tasks X, Y, Z, would be non-exempt. For SMs 3 and 4 there is an added layer of  
11 complexity since they performed both exempt and non-exempt tasks. Thus, Manager 3 could be  
12 either exempt or non-exempt depending what percentage of his work-time was spent performing  
13 task A versus tasks Y and Z. Whereas Manager 4 could be exempt or non-exempt depending on  
14 the percentage of her work-time was spent performing task X versus tasks B and C. Again, since  
15 there is no overlap, one cannot use Manager 3's testimony as the basis for determining the  
16 experiences of Manager 4. Nor can one use the experiences of SMs 3 and 4 as proxies for the  
17 experiences of SMs 1 and 2. Thus, to make merits determinations for all four SMs, one would  
18 have to question each manager individually in order to identify which tasks they performed, as  
19 well as, for SMs 3 and 4, who performed both exempt and non-exempt tasks, what percentage of  
20 their time was spent performing each task.

21  
22 7. The examples above present circumstances where variability in how SMs performed their  
23 job resulted in none of the four SMs' experiences being the same, which led to the need to  
24 conduct individualized inquiry into what tasks they performed and, when they performed a mix of  
25 exempt and non-exempt tasks, how much time they spent performing each tasks. The end result  
26 of this scenario is that a portion of the group met the standard for the exemption and a portion did  
27 not. However, one could not determine which manager's experiences met the criteria and which  
28 did not without questioning each individually. Plaintiffs' argument appears to be that one can

1 create a random sample and make determinations and then extrapolate the results to the remainder  
 2 of the class. However, if the circumstances in the example above were true, the need to  
 3 individually question SMs regarding their experiences would persist even if the sample size was  
 4 expanded from four to a considerably larger number. Suppose it were the case that a portion of  
 5 the expanded sample would have experiences similar to Manager 1, a portion would have  
 6 experiences similar to Manager 2, and portions would have experiences similar to SMs 3 and 4  
 7 respectively. Extrapolating these results to the remainder of the class would only result in an  
 8 estimate of the portion of class members whose experiences may fit the characteristics of each  
 9 manager. However, unless one could determine which non-testifying SMs are like Manager 1,  
 10 which non-testifying SMs are like Manager 2, which non-testifying SMs are like Manager 3, and  
 11 which non-testifying SMs are like Manager 4 based on some external observable trait, statistical  
 12 analysis would not be useful for determining which individual non-testifying SMs had  
 13 experiences similar to SMs who worked in an exempt capacity and which did not.

14  
 15 • **Variability in Experiences Can Result in Significant Error in Class Wide**  
 16 **Adjudications**

17 8. The examples above illustrate why uniformity in experiences is important when the  
 18 exemption question is dependent on what tasks are performed and how much time is spent  
 19 performing each task. If it were the case that all SMs had uniform experiences, then, by  
 20 definition, they would all be on the same side of the liability test. Consequently, no  
 21 individualized inquiry would be necessary since whatever class-wide liability finding was made  
 22 would be accurate for all members of the class. However, on the other hand, if there was wide  
 23 variability that resulted in some class members being exempt and others non-exempt, then, by  
 24 definition, whatever class-wide liability finding that is made will be wrong for a portion of the  
 25 class. Thus, the question becomes how much error is too much? To illustrate this point, consider  
 26 the following hypothetical outcome. Suppose that 51% of the class was on one side of the line  
 27 and 49% was on the other. If that were the case, then whatever liability decision was made would  
 28

1 be wrong for approximately half of the class. Under these circumstances a finding in favor Dollar  
2 Tree would result in large numbers of class members with valid claims who would have been  
3 compensated had they pursued their case individually not being compensated due to the class  
4 wide finding in favor of Dollar Tree. On the other hand, if the proportions were reversed Dollar  
5 Tree would be required to compensate hundreds of class members who do not have valid claims  
6 and class members with valid claims would see their awards cut in order to pay class members  
7 who have no claim. As evidenced by the example above, the error rate for a class wide  
8 adjudication increases as the proportion of the class with valid claims gets closer to 50/50.

9  
10 9. It is important to note that plaintiffs have not yet performed an analysis of whether or not  
11 a portion of the class met the requirements for the exemption and a portion did not. Indeed, in  
12 connection with class certification, plaintiffs did not conduct a survey or implement any other  
13 systematic data collection process that would demonstrate that class members had uniform  
14 experiences. Since plaintiffs have not conducted a study, they have no basis for stating that class  
15 members had uniform experiences or that the named plaintiffs had experiences similar to the  
16 class. Plaintiffs have argued “while every manager will perform exempt functions to some  
17 degree, that degree is a question of liability, all other questions (e.g. what the defendant expected,  
18 why it expected it, and how it was communicated) are completely defendant oriented questions  
19 that really should be answered once for all members of the class.”<sup>1</sup> In other words, plaintiffs  
20 agree that every class member performs some managerial duties for some amount of time.  
21 Plaintiffs also do not assert that class members spent similar amounts of time performing  
22 managerial duties. However, in plaintiffs view, this variability should be ignored since making  
23 this determination would lead to a merits finding of ‘yes’ or ‘no’ for that individual which is not  
24 the focus at this phase of the case. In making these assertions, plaintiffs’ approach fails to  
25 consider the implications that variability in experiences has upon the usefulness of representative  
26 testimony and statistical techniques to make class-wide determinations. Further, plaintiffs have

27 <sup>1</sup> Plaintiffs Reply Memorandum and Points of Authority of Representative Plaintiff’s Motion for  
28 Class Certification, p. 1.

1 failed to consider that understanding whether portions of the class members are on both sides of  
 2 the liability test is the basic step for determining if class wide findings with an acceptable level of  
 3 error.

4  
 5 • **Plaintiffs' Common Questions Do Not Eliminate the Need to Collect Detailed**  
 6 **Information Regarding Class Members Actual Work Activities**

7 10. Instead of examining issues that impact whether one can use a class action process to  
 8 make determinations about the group's experience, plaintiffs have focused on questions like,  
 9 "what the defendant expected, why it expected it, and how it was communicated" and claim that  
 10 these issues should result in a common answer for all class members.<sup>2</sup> The answers to plaintiffs'  
 11 questions do not address the bottom line question of whether class members actually performed  
 12 their job duties in a manner consistent with the requirements for the exemption. Indeed, suppose  
 13 it were the case that all three questions in plaintiffs' brief were answered. Does the answer to  
 14 those questions result in a class-wide adjudication? The answer is no. Since none of the  
 15 questions address the basic issue whether SMs spent more than half of their time performing  
 16 exempt duties, individual inquiries regarding the amount of time spent performing various tasks  
 17 would still have to be collected in order to make determinations for individual testifying class  
 18 members on the merits issue, and then one would need to determine whether or not the results can  
 19 be extrapolated to the class without significant error.

20 • **The Question of Whether Class Members Performed the Tasks Listed on The**  
 21 **Certification Forms Does Not Answer the Question of Whether Class Members Have**  
 22 **Valid Claims**  
 23

24  
 25 <sup>2</sup> I imagine that Dollar Tree can answer these questions quickly. The likely answers are: 1) Dollar  
 26 Tree expected its SMs to work in an exempt capacity. 2) Dollar Tree had the results of the survey  
 27 that I conducted in the 2002-2003 time period that demonstrated that a strong majority of SMs  
 28 report allocating more than half of their time to exempt duties, and, 3) The company's  
 expectations of how SMs work were communicated in the Certifications of Duties form.



11. In avoiding the discussion on whether or not variability exists, plaintiffs have decided that the common question is whether class members performed the 17 numbered tasks listed on the payroll Certification Form as well as the five non-managerial tasks (receiving product, distributing and storing product, stocking product, and cashiering). Given this theory, suppose we were to confirm through the testimony of a sample of randomly chosen class members that that every class member spent at least some of their time performing every task identified on the Certification of Duties Form. Have we made any meaningful progress in making a class-wide determination? As evidenced by the discussion above, the mere fact that a manager performed a given task is irrelevant without an understanding of the how much time they spent performing the task. Further, suppose it were the case that not all class members performed every task on the list. What do we do with this information? Again, that finding would not be relevant to making merits determinations on a class-wide or even individual basis since time spent performing various duties is what actually matters.

• **Plaintiffs' Proposed Trial Plan Will Likely Result In The Need to Revisit Class Certification Issues Mid-Trial**

12. Plaintiffs' view is that one can resolve the legal issues by obtaining representative testimony from a group of randomly selected class members that can then be extrapolated to the remainder of the class. As noted above and below, there are many significant issues that will arise if the testimony shows wide variation in experiences. Thus, the question is whether whatever process plaintiffs propose to generate the data on SMs' work activities will produce data that demonstrates variability in SMs' work activities. At present, the detailed data related to SMs work activities consists of the weekly Certification Form data and the 2002-2003 survey data.<sup>3</sup> Since both of these sources of data show patterns of wide variation in SMs' work activities and

<sup>3</sup> In connection to a prior lawsuit regarding whether Dollar Tree SMs were appropriately classified as exempt, Resolution Economics designed and conducted a survey of current and former Dollar Tree SMs. Among other things, the survey collected detailed data related to SMs estimates of how much time they spent performing various groups of exempt and non-exempt tasks and how much time they estimate that they spent in various areas of the store.

1 experiences, it is unlikely that whatever approach plaintiffs use to collect representative evidence  
 2 on class members' work activities will demonstrate that class members had uniform and  
 3 consistent experiences. If there is variability in experiences, one would have to determine on an  
 4 individual by individual basis which non-testifying manager had experiences similar to which  
 5 testifying manager.

- 6
- 7 • **Plaintiffs Have Not Considered Whether Systematic Policies Practices and**  
 8 **Procedures Govern Class Members' Behavior and Result in Uniformity of**  
 9 **Experiences Where Class Members Spent Significantly Less Than Half of Their**  
 10 **Time Performing Exempt Duties**

11 13. Plaintiffs typically claim that whatever systematic policies, practices, and procedures  
 12 resulted in uniformity of experiences across members of the proposed class. Generally one can  
 13 test if this theory is true by examining the extent of variability in experiences across class  
 14 members. If it were the case that policies governed SMs' behavior, then one would expect very  
 15 limited variability across members in terms of the time spent performing various work-related  
 16 tasks and the overall percentage of time spent performing exempt versus non-exempt tasks would  
 17 be similar. The end result would be that most, if not all, of the class would be on the same side of  
 18 the merits issues. Instead of a 50/50 proportion of valid and invalid claims, the proportion could  
 19 be closer 100/0 or 95/5, which eliminates or significantly reduces the error associated with class  
 20 wide adjudication. The exception to this result of adjudicating with minimal error are situations  
 21 where there is limited variability in experiences across class members, but the percentage of time  
 22 spent performing exempt duties is very close to 50%. For example, suppose class members'  
 23 reported exempt time ranged between 47% and 53%. Under these circumstances, it is likely that  
 24 whatever class-wide finding is rendered will be wrong for significant portions of the class.  
 25 Given this issue, the second prong of the uniformity question is whether the "uniform experience"  
 26 results in class members' exempt time being close to the 50%.

14. Suppose it were the case that data was collected that showed there is wide variability in experiences across class members. This finding would be the opposite of what would be expected if systematic policies, practices, and procedures governed manager behavior. Rather, this finding would be consistent with the hypothesis that variability in individualized factors such as managerial style, employee productivity, employee commitment, and store specific factors such as sales volume and customer flow influenced SMs' behavior. If that were the case, then one cannot use "representative" testimony to make determinations about the experiences of SMs who have not provided testimony. Such a process would likely devolve into making determinations of which non-testifying manager had experiences similar to which testifying manager. However, this cannot be done without individualized inquiry.

- **The Available Data Demonstrates That There Is Wide Variability Across SMs in Terms of the Percentage of Work Weeks That They Reported Spending More Than 50% of Their Time Performing Managerial Duties.**

15. In 2005, Dollar Tree began a process whereby SMs were asked to certify on a weekly basis that they spent more than half of their time performing managerial duties, or, if not, what were the operational issues that led to them being unable to allocate more than half of their time to managerial duties. The 'Certification of Duties' forms asked SMs to record at the end of each week whether they had spent more than 50% of their time engaged in managerial tasks. In total Certification Forms are available for 29,431 work weeks during the class period. Analyses of the weekly forms indicate that SMs report spending more than half of their time performing managerial duties for 88% of the weeks reported. However, if one delves underneath the aggregate statistic, there is considerable variation across SMs. As described in detail below, there is considerable variation across SMs, across stores, across districts, and across regions in terms of the percentage of weeks SMs certified that they were performing exempt duties. In addition, the data demonstrates that there is considerable variability in the percentage of weeks the same manager certified as exempt when they worked at different stores. Thus, the data suggests that

1 manager-specific and store-specific factors play a role in whether a given manager certified that  
 2 he or she spent more than half of their time performing managerial duties.

- 3
- 4 • **Statistical Analysis of The Certification Forms Indicates That They Provide Valid**  
 5 **Measures of Instances Where SMs May Not Have Spent More Than 50% of Their**  
 6 **Time Performing Managerial Duties.**

7 16. Given the findings of variability in terms of the percentage of weeks certified as exempt,  
 8 one question that must be addressed is whether the Certification Forms provide a valid measure of  
 9 weeks where SMs did not spend more than 50% of their time performing exempt duties. From a  
 10 technical perspective, the concept of validity refers to whether the data collection instrument, in  
 11 this case the Certification Form, produces accurate measures of what it intends to measure. One  
 12 methodology to assess validity is to statistically compare outcomes with other factors that should  
 13 be correlated with those outcomes. As described in detail below, there are many statistically  
 14 significant relationships between a 'no' certification response and operational factors that were  
 15 occurring in the store during the week in question. Thus, in the aggregate, it appears that the  
 16 Certification Forms provide valid measures.

- 17
- 18 • **Whether or Not A Given Manager Correctly Certified Their Time Would Likely**  
 19 **Require Individualized Inquiry**

20 17. The requirement for SMs to complete certifications presents an interesting question as the  
 21 case proceeds forward. In order to make a claim, most plaintiffs will be required to recant or  
 22 explain the information reported on their weekly certification and provide contradictory  
 23 information several months or years later regarding what happened during a particular week.  
 24 Given this issue, the fundamental questions become whether or not the claims forms provide a  
 25 valid measure of SMs' work activities and whether one Store Manager's claim that he or she did  
 26 not accurately complete the certification should be applied to others who have not stepped  
 27 forward and provided information that their Certification Forms are inaccurate. In other words,  
 28

1 plaintiffs must claim that SMs were required to report or did report spending more than half of  
 2 their time performing managerial duties, whether they did so or not and that the requirement was  
 3 systematically affecting all SMs. As discussed in detail below, the certification data  
 4 demonstrates variability, not only from week to week, but also in the frequency that SMs reported  
 5 exempt status over time at the individual, store, and district levels. This finding is inconsistent  
 6 with the notion that SMs systematically provided inaccurate responses when reporting how they  
 7 spent their time. Further, the validation analysis discussed below shows that there are  
 8 statistically significant relationships between operational factors at a particular store during a  
 9 particular week and incidents where SMs report that they spent less than half of their time  
 10 performing managerial duties. This finding is the opposite of what would be expected if SMs  
 11 were simply checking a box without consideration regarding how they spent their time during a  
 12 particular week. Rather, these findings support the conclusion that the certifications provide  
 13 valid measures of weeks where SMs spent less than half their time performing managerial duties.  
 14 Thus, even if it were the case that individual plaintiffs recant their Certification Forms, the data  
 15 does not support the theory all SMs systematically falsely certified that they spent more than half  
 16 of their time performing managerial duties. Consequently, it would be inappropriate to  
 17 extrapolate the results of one or a group of class members who have recanted their weekly  
 18 Certification Forms to others who have not. Thus, individual inquiry may be necessary to  
 19 determine each manager's practices for completing their certifications.

20  
 21 • **The Dollar Tree Business Model and Role of the Manager in the Store Would be**  
 22 **Expected to Result in Variability in Experiences Across SMs**

23 18. The Dollar Tree business model features low prices (\$1 or less per item) and low margins  
 24 with profits being driven through high sales volume. Generally, hourly Associates are not asked  
 25 to "sell" product. Rather, Associates focus on receiving product, pricing merchandise,  
 26 maintaining the level of stock, merchandising the store, and cashiering. Associates' customer  
 27 service duties are typically limited to helping customers find certain items in the store. Given  
 28

1 this environment, the manager's primary role is to ensure the flow of merchandise from the  
 2 receiving dock to the shelves, and then out the door. Fundamental aspects of the manager's  
 3 mission are ensuring that the store has the appropriate number of trained Associates, and that  
 4 Associates work at a pace sufficient to complete their assigned tasks within budgeted hours. As  
 5 discussed in detail below, SMs in stores where employees fail to meet the budgeted time to  
 6 complete tasks are likely to be required to create more efficiency in performing other tasks, add  
 7 additional labor hours, or perform additional labor themselves. Thus, individual store  
 8 characteristics are likely a contributing factor in the variability in SMs' activities.

9  
 10 • **Analysis of Time Keeping Data Indicates That SMs Make Different Choices**  
 11 **Regarding the Use of Overtime Hours in Their Stores**

12 19. The timekeeping data also suggests that SMs exercise discretion over the use of overtime  
 13 hours in their stores. As noted below, the time-keeping data was analyzed across stores and  
 14 across SMs.<sup>4</sup> For each SM, the average number of overtime hours per week that they utilized was  
 15 computed. This analysis demonstrated that the average and median number of overtime hours  
 16 used per week across SMs were 17.7 and 5.3 hours per week respectively with a standard  
 17 deviation of 39 hours. Indeed, 10% of the SMs averaged 1.9 overtime hours or fewer per week  
 18 and 10% of the SMs averaged 36 overtime hours or more per week. As evidenced by these  
 19 findings, some SMs use relatively few overtime hours per week while others use relatively large  
 20 amounts of weekly overtime to operate their stores. A chart showing the average number of  
 21 overtime hours utilized per week for 30 randomly selected SMs is shown in Exhibit 1. As  
 22 demonstrated by the chart and the statistics above, there is wide variability across SMs in the use  
 23 of overtime.

24  
 25 20. The finding that class members vary in their use of overtime labor hours creates several  
 26 questions. First, does a manager who uses overtime labor to complete tasks in their store spend

27  
 28 <sup>4</sup> The Compass data utilized in the analysis spanned 2006-2007.

different amounts of time performing hourly labor as compared to SMs who do not use overtime? If the answer to this question is 'yes' then differences in overtime use would be expected to drive variability across SMs in terms of the percentage of time spent performing non-managerial duties. A second question is whether SMs who did not use overtime did so because their employees were well supervised and productive, or because the manager supplied the necessary labor themselves. Again, the answer to this question has direct bearing on how much time SMs spend performing non-exempt tasks and different responses would lead to variation in the percentage of time spent performing exempt duties.

- **Differences in Employee Commitment Would Be Expected to Drive Variation in Time Spent Performing Managerial Duties**

21. The second employee quality issue is employee turnover and/or "no-shows," which may result in labor hours being available, but not utilized if the manager is unable to find employees to work on a given day.<sup>5</sup> Again, there are several potential courses of action available to SMs when this occurs. One potential option would be to ask employees who are on-shift that day to work additional hours, which in some instances will result in overtime. A second option is to call in workers who are off that day to fill-in for the missing employee. The third option would be for the manager to supply some additional non-managerial labor themselves. Again, whatever decision the manager makes would influence the amount of time spent performing managerial duties. Thus, variability in decision-making would be expected to drive variability in the percentage of work-time SMs allocated to managerial duties.

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<sup>5</sup> As discussed in detail below, analysis of the certifications data indicates that there are statistically significant relationships between weeks where SMs did not certify that they spent more than half of their time on the 17 duties and labor issues in the store that week.

**SECTION IV – ANALYSIS OF SM ‘CERTIFICATION OF DUTIES’ FORMS SHOWS WIDE VARIATION IN TERMS OF THE PERCENTAGE OF WEEKS CERTIFIED AS EXEMPT**

- **There Is Wide Variation Across SMs In Terms of the Percentage of Work-Weeks Certified As Exempt**

22. Beginning in 2005 Dollar Tree implemented the ‘Certification of Duties’ form to be completed by SMs on a weekly basis.<sup>6</sup> Dollar Tree SMs were required to complete the form by indicating whether they spent more than 50% of their time performing a combination of 17 duties during the week. SMs provided ‘yes’ or ‘no’ responses and were asked to provide an explanation if they did not meet the 50% threshold. To examine variability across SMs, the percentage of work-weeks each manager reported as “exempt” was computed. This percentage was computed by counting the total number of ‘yes’ weeks worked for each manager and dividing that number by the total number of weeks that manager worked. SMs who had ‘yes’ proportions of greater than 50% were considered to be correctly classified. Again, these results show that fewer than 12% of SMs reported spending a majority of their weeks working in a non-exempt capacity.<sup>7</sup> These results are summarized in Exhibit 2 – the manager-level percentages of ‘yes’ responses range from 30% to 80%, with the majority of SMs at or above the 50% line.

23. Additionally, the certifications data reveal considerable variability across SMs, stores, and districts. While many SMs uniformly reported that they worked in a managerial capacity during all of their weeks as Dollar Tree SMs, other SMs reported that they *never* performed exempt tasks

<sup>6</sup>The ‘Certification of Duties’ form data were built by combining electronic records and paper records that were examined and then hand-coded. Duplicate entries for the same ‘manager-week’ were eliminated from the data as were data provided by unidentified SMs. Further, weeks where SMs indicated having been on vacation, on leave, or records where they indicated that they were not the store manager were excluded based on the reasons provided on the form.

<sup>7</sup> SMs’ who worked in a store for fewer than 10 weeks were excluded from this analysis. This resulted in more than 500 unique manager-store combinations over the period from 2005-2009.



more than 50% of the time. Such wide variation in the responses from manager to manager suggests that manager-level attributes and decision making play a role. Some, in fact, most SMs certify that they are consistently able to allocate more than half of their time across the set of managerial activities that Dollar Tree SMs are required to perform. Other SMs are routinely unable to configure their work weeks in ways that allow them to devote a majority of their time to managerial tasks. Each manager's percentage of 'yes' certification responses can be found in Exhibits 3A, 3B, and 3C. As evidenced by these exhibits, there is significant variability across members of the class in terms of the percentage of weeks they certified as working in an exempt capacity. Approximately 62% of SMs reported that 100% of their weeks were 'exempt', while approximately 2.5% SMs reported that 0% of their weeks were exempt, and 35% of SMs fell somewhere in between.

- **There is Wide Variability in the Percentage of Weeks Certified As Exempt Across Stores**

24. Exhibits 4A, 4B, and 4C illustrate the between-store variability that is observed in the data. These exhibits show the rates of 'yes' responses for each store. Looking across the three charts, there is considerable fluctuation in the bars that are displayed. Stores fluctuate from 0% to 100 'yes' responses on the forms. It is important to note that this variation is observed even when comparing stores within the same region. Exhibit 4C, for example, shows certification responses for all stores in Region #22. To illustrate the variation across stores in Region #22, compare the results for the three stores are highlighted in red, stores #1535, #3194, and #1855. As seen in the chart, Store #1535's 'yes' response rate was 99%. In Store #3194, the 'yes' response rate was 70%, and in Store #1855 the rate of 'yes' responses was only 47%. As evidenced by this example, whatever control that existed at the regional level did not result in uniform outcomes across all stores in the region.

1       • **SMs Who Worked At Multiple Stores Often Reported a Different Percentage of**  
 2       **Weeks Certified as Exempt After Changing Stores**

3       25.     Variability in responses observed at the store-level is underscored when considering that  
 4       certification responses often change when SMs change stores. The data demonstrates that the  
 5       event of a new SM taking over a store frequently coincides with a change in the frequency with  
 6       which a manager reports 'yes' on his/her Certification Forms. Exhibits 5A and 5B show SMs  
 7       who worked at two different stores. It is clear from the chart that differences between 'yes'  
 8       reporting at the first store and the second store were common occurrences.

9  
 10     26.     Exhibit 6 shows certification responses for 11 SMs who worked at three different stores.  
 11     Consider, for example, the case of Jerry Clemens who worked as a manager in three different  
 12     Dollar Tree locations. In his first store, #1773, he provided 'yes' responses 100% of the time. As  
 13     a manager of Store #1899, he provided 'yes' responses 84% of the time. Finally, when moving to  
 14     Store #2216, he indicated 'yes' on his Certification Forms approximately 72% of the time. As  
 15     seen in the exhibit, Mr. Clemens is not alone in reporting different certification responses when  
 16     changing stores. In fact, only 4 of the 11 SMs had consistent response patterns across all three of  
 17     the stores where they worked. Other SMs' responses exhibited between-store differences of over  
 18     70%. For example, Richard Hoyt never reported 'yes' during any of the 20 weeks he spent at  
 19     Store #1215, but reported 'yes' 70% of the time during his 67 weeks at Store #1229.

20  
 21     27.     The reasons why SMs change their certification reporting patterns when changing work  
 22     environments are illuminated by reviewing the deposition testimony provided in this case. For  
 23     example, SM Conrad Mayhew testified about his experiences in both the Tracy and Oakdale  
 24     Dollar Tree stores. In addition to noting that the Oakdale store was about half of the size and that  
 25     it differed in layout, he also testified that the store had a wider variety of merchandise.<sup>8</sup> While  
 26     Mr. Mayhew was at the Tracy store, he reported exempt-status on the Certification Forms 100%

27     \_\_\_\_\_  
 28     <sup>8</sup> Deposition of Conrad Mayhew, 38:8-40:11.

1 of the time. However, once moving to the Oakdale store, he reported exempt status during 66%  
 2 of his weeks. Based on his testimony, it appears that the combination of different sales volume,  
 3 variety of merchandise, customers, and employees influenced the amount of time he could spend  
 4 performing managerial tasks. As a result, these changes are reflected in his Certification Form  
 5 responses.

6  
 7 • **There is Wide Variability in the Percentage of Weeks Certified As Exempt Across**  
 8 **Districts**

9 28. Exhibit 7 shows further variability in the proportion of ‘yes’ responses at the district-level.  
 10 Across 3 districts—#261, #197, and #194—the ‘Yes’ response rate varied from 40% to 76% to  
 11 99%, respectively. These districts are also highlighted in red. The spread between the lowest  
 12 district (40%) and the highest district (99%) is nearly 60 percentage points. The wide variation  
 13 across districts in percentage of weeks certified as exempt is the opposite of what would be  
 14 expected if centralized controls, policies, practices and procedures governed SMs behavior.

15  
 16 29. These differences observed at the district-level are not surprising in light of the deposition  
 17 testimony that has been offered by several SMs. In their testimony, SMs cited differences in the  
 18 management ‘styles’ of the District Managers that oversaw them. They were able to express  
 19 preferences for certain District Managers and could cite examples of how their work had been  
 20 hindered or helped by particular district-level supervisors. Mr. Mayhew, for instance, describes  
 21 the style of his DM ‘Ray’ as ‘strictly by the book...set-ups done correctly 100 percent, signs put  
 22 up, stockroom empty, things pulled forward, recovered 100 percent at night, store vacuumed.  
 23 Restrooms cleaned two three times a day.’<sup>9</sup> Ray, in his opinion, was one of the best DMs he ever  
 24 worked under. John Kohl, by contrast, was ‘more gray than black’ and was less explicit in letting  
 25 Mr. Mayhew know when things in his store were not meeting standards.

26  
 27 \_\_\_\_\_  
 28 <sup>9</sup> Deposition of Conrad Mayhew, 60:5-21.

1 30. Arnaldo Pineda also testified that his District Managers were considerably different in  
2 how they oversaw his work as an SM. In discussing his time under Kenneth Miller, Mr. Pineda  
3 testified that ‘he treat[ed] me like we were in boot camp’ and he described Mr. Miller as a  
4 micromanager.<sup>10</sup> One of Mr. Pineda’s other District Managers, Rob White, was described in  
5 testimony as “the opposite” of Mr. Miller. It is clear to see from the depositions of both Mr.  
6 Meyhew and Mr. Pineda how District Managers could potentially affect SMs’ ability to perform  
7 their jobs.

8  
9 31. Looking to the certifications data, differences in managerial style across District Managers  
10 appear to be related to how often Dollar Tree SMs report exempt status on their Certification  
11 Forms. When comparing SMs who worked under two different DMs during their tenure at Dollar  
12 Tree, there are observable differences in the frequency of ‘yes’ reporting on the forms based on  
13 the district supervisor. For example, James Ellis worked under two DMs—Burdeshaw and  
14 Guzman—during his tenure as a store manager. Under Burdeshaw his reported ‘yes’ rate on the  
15 Certification Forms was 51% while under Guzman, his rate was nearly 82%. Similarly, Danny  
16 Herrera managed stores under two DMs, Whalen and Hawley, and his rate of reporting ‘yes’ on  
17 the Certification Forms was different under the two District Managers. His rate of ‘yes’ reporting  
18 under Whalen was 28% and his rate under Hawley was 88%. These two SMs are among many  
19 other examples—Exhibit 8 shows comparisons for a sample of 30 SMs who worked under more  
20 than one DM.

21  
22 32. In their papers, Plaintiffs have asserted that Dollar Tree SMs do not have the discretion to  
23 run their stores as they see fit because company-wide policies and automated inventory systems  
24 already dictate how the stores will operate. However, if stores and districts were operating under  
25 common policies and fixed procedures that dictated manager behavior, such wide variability in  
26 ‘yes’ responses at the individual, store, and district level would be unexpected. Rather, one

27  
28 <sup>10</sup> Deposition of Arnaldo Pineda, 27:6-28:7.

would expect much more uniformity in SMs' weekly responses and that uniformity would trend strongly in the direction of non-exempt status. As demonstrated by the exhibits discussed above, the data suggests that whatever common policies, practices, and procedures that exist did not result in uniformity of experiences across SMs.

## SECTION V - ASSESSING THE VALIDITY OF MANAGER CERTIFICATIONS

- **Assessing the Validity of Manager's Week-To-Week 'Exempt-Status' Certification Forms:**

33. In the documents supporting their filing, plaintiffs have acknowledged that the 'Certification of Duties' forms were completed by SMs on a weekly basis. However, through the declarations they have submitted, plaintiffs have tried to cast doubt on the accuracy of the information contained within these forms. Plaintiffs contend that some SMs indicated exempt-status uniformly, without regard for the tasks that they actually performed during the week. Consider the declaration of D'Estrea Bell who states: "I always answered 'yes' to the 'Certification of Duties Form,' thereby indicating that I had complied with the Dollar Tree mandated managerial duties and responsibilities for this week."<sup>11</sup> Taking Ms. Bell's claim at face value, the validity of the forms becomes an important issue to address: were SMs filling out the forms in a way that failed to accurately reflect the work that they performed? In order to answer this question, an empirical study of the forms' validity is required.

34. There are both qualitative and quantitative reasons to believe that the forms accurately represent the week-to-week activities of SMs. From a qualitative perspective, the deposition testimony provided in this matter provides numerous examples of SMs testifying that they understood the terms of the Certification Forms when they signed them. Consider, for example, the testimony of Charles Banks. When asked whether he was telling Dollar Tree through his

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<sup>11</sup> Declaration of D'Estrea Bell, p3.

1 'yes' response on the Certification Form whether he had spent more than 50% of his time  
2 performing the 17 tasks presented on the form, Mr. Banks replied "Right. Yes." He also testified  
3 that he had the restriction of spending no more than 35% of his time on cashiering, stocking, and  
4 receiving product in mind when he completed the forms.<sup>12</sup> Marvin Reyes provided comparable  
5 testimony, stating 'yes' when asked whether he believed that his signature on the Certification  
6 Form indicated that he had spent 50% or more of his time on the 17 managerial tasks listed on the  
7 form.<sup>13</sup> It is testimony of this sort that suggests, on a prima facie level, that SMs were responding  
8 to these forms honestly and to the best of their abilities.

9  
10 35. To validate the 'Certification of Duties Form' responses from a quantitative standpoint,  
11 the week-to-week certifications data were merged with store-level and employee time clock data  
12 from Dollar Tree's Compass time-keeping software. Data from all sources were available for the  
13 period between May 2006 and December 2007. Across all Dollar Tree locations in CA, 237  
14 unique stores and 10,316 unique manager work weeks were examined. First, SMs' responses to  
15 the certifications were compared to fixed store-level attributes to determine if those who indicated  
16 a higher proportion of non-exempt weeks also tended to work in environments that were more  
17 likely to require the use of their time in non-managerial capacities. Next, as a further means of  
18 validating the certification responses, changes in SMs' weekly reporting of exempt/non-exempt  
19 status were compared to store-level attributes that varied from week to week. Based on these  
20 analyses, I conclude that the certifications have a strong tendency to reflect actual in-store  
21 conditions and are likely to accurately represent the activities performed by each manager during  
22 the week.

23  
24  
25  
26  
27 <sup>12</sup> Deposition of Charles Banks, 18:15-19:9.

28 <sup>13</sup> Deposition of Marvin Reyes, 16:4-11.

1       • **SMs' Propensities to Report 'Exempt' Status are Associated with Store-Level**  
 2       **Attributes**

3       36.       The first set of validation analyses examines store-level characteristics that are relatively  
 4       fixed over time. The analyses compare these semi-fixed attributes to the proportion of exempt  
 5       weeks that SMs reported during their tenure at a particular store. If SMs reported their  
 6       exempt/non-exempt status in a way that did not accurately reflect in-store conditions, one would  
 7       not expect to see any significant relationship between their certification responses and store-level  
 8       attributes. Based on the forthcoming analyses, I conclude that there are identifiable store-level  
 9       factors—namely, the number of full-time employees and the level of customer flow per  
 10       associate—that vary in tandem with each SMs' propensity to report exempt status.

11  
 12       37.       To examine these relationships, the proportion of exempt weeks was calculated for each  
 13       store manager. A manager who consistently answered 'yes' on the Certification Form was  
 14       assigned a proportion of 100%, a manager who answered 'yes' during 18 of 36 work weeks was  
 15       assigned a proportion of 50%, and so on. Each SMs' proportion of 'exempt status' weeks was  
 16       compared to the observable characteristics of his/her store during the period in which he/she  
 17       operated as the store manager.

18  
 19       38.       The first notable finding is that SMs with a higher percentage of 'full-time' employees  
 20       were likely to report a higher proportion of exempt-status work weeks.<sup>14</sup> For each store, the  
 21       percentage of active full-time employees was calculated. Stores with a full-time-to-part-time  
 22       employee ratio in the top 25% were assigned to one group. Those stores with a full-time-to-part-  
 23       time employee ratio in the bottom 25% were assigned to a different group. SMs of stores in the  
 24       two groups were compared to see whether their reported proportions of exempt-status weeks  
 25       differed. For SMs with a larger share of full-time employees, the reported percentage of exempt-

26       <sup>14</sup> For purposes of this analysis, the term 'full-time' is meant to describe employees that were  
 27       consistently and regularly employed for close to 40 hours per week. In the analysis, 'full-time'  
 28       employees are defined as those employees that worked 35+ hours per week for more than 80% of  
 their active weeks. There are 626 employees who met these criteria.

1 status weeks was nearly 9% higher (81.4% vs. 90.1%). This finding makes intuitive sense: full-  
2 time employees are likely to be more experienced, to better understand both the short- and long-  
3 term needs of the store, and to have predictable schedules that allow SMs to plan more  
4 effectively. This takes the burden off of SMs to make up for the lack of experience among a  
5 work force comprised of short-term and part-time hires. As a direct result they are able to devote  
6 more time to exempt, managerial tasks, resulting in a higher reported proportion of exempt  
7 weeks. It is interesting to note that due to employee turnover the level of experience in a  
8 particular store changes over time. Thus, over the class period, stores would be expected to  
9 vacillate in terms of the level of employees' experience.

10  
11 39. A second analysis examines whether store sales activity and customer flow are related to  
12 the proportions of exempt/non-exempt weeks that SMs report. For this analysis, the proper  
13 metric to study is the volume of sales per associate. This measure serves as a proxy for how  
14 'busy' each individual associate is in the store. A higher volume per sales associate is likely to be  
15 related to increased levels of cashiering, stocking, cleaning, and assisting customers. The  
16 expectation is that in stores where each non-exempt employee encounters higher sales volume per  
17 associate, SMs will be more likely to also perform non-managerial work. Since each member of  
18 the non-exempt labor force is required to service a higher level of customer flow compared to  
19 stores with lower sales volume per associate, some SMs may have a tendency to compensate by  
20 assisting with certain non-managerial functions.

21  
22 40. This expectation is confirmed in the Dollar Tree data by identifying and analyzing stores  
23 with high customer flow per associate, or those in the top 25% in terms of sales per associate.  
24 SMs that oversaw stores with high customer flow were much more likely to report non-exempt  
25 time. 48.3% of the SMs in high customer flow stores also had a 'high' rate of weekly non-  
26 exempt reporting.<sup>15</sup> Among SMs in stores with low and average customer flow per associate, a

27 <sup>15</sup> SMs with 'high' rates of non-exempt reporting were defined as those SMs that reported  
28 spending more than 65% of their weeks working in a non-exempt capacity. Due to the



1 'high' rate of weekly non-exempt reporting was less common: only 29.2%, or a difference or  
2 more than 19%.<sup>16</sup>

3  
4 41. Taken together, these two analyses suggest that fixed store-level attributes exhibit clear  
5 statistical relationships with SMs' responses provided on the Certification Forms. These  
6 statistical relationships would be unexpected if the certification responses were provided either at-  
7 random or in a uniform fashion. I turn now to examining week-to-week fluctuation in the  
8 reporting of exempt/non-exempt status and how these weekly changes are associated with  
9 changes in store conditions that vary on a weekly basis.

10  
11 • **Week-to-Week Variation in SMs' Reporting of Exempt/Non-Exempt Status is**  
12 **Associated With Actual Changes in Weekly Store Staffing Conditions**

13 42. The previous set of validation analyses examined how fixed store-level attributes were  
14 related to individual SMs' overall propensities for reporting non-exempt status. The next set of  
15 analyses examines how week-to-week changes in store conditions affect managerial reporting of  
16 exempt/non-exempt status on a weekly basis. A good number of SMs' provided responses on the  
17 Certification of Duties forms that exhibit fluctuation from week to week. This variation allows  
18 for SMs' exempt/non-exempt status in a given week to be compared to the store's staffing  
19 conditions for that week. The question for the purpose of validating the Certification Forms is

20 \_\_\_\_\_  
21 (continued...)

22 availability of store sales data, this analysis was conducted for approximately 67% of the SMs.  
23 When dealing with smaller samples, analysts commonly rely on Chi-Squared Statistics and  
24 Fisher's Exact Tests, as opposed to T-statistics from a comparison of sample means, to determine  
25 statistical significance. The results here are significant using both the Chi-Squared and Fisher's  
26 Exact methods.

27 <sup>16</sup> It should be noted that despite the large difference observed between stores with high sales  
28 volume per associate and other stores, there remains considerable variation among stores in the  
29 'high sales volume per associate' group. Exhibit 9 provides a graphical representation of the  
30 percentage of 'yes' responses for SMs overseeing stores in the top 25th percentile with regard to  
31 sales volume per associate. This chart shows that proportions of 'yes' responses on the  
32 certification forms vary considerably even within this subset of the Dollar Tree SM population.

whether SMs' responses on the forms can be linked to actual changes in staffing conditions. If changes in staffing conditions tend to correspond with changes in a manger's reporting of exempt/non-exempt status, it supports the notion that his/her response on the Certification Form accurately reflects the work that he/she performed in that week.

43. In making this comparison, the first clear and noteworthy finding is that SMs were more likely to report non-exempt status in weeks where they were understaffed. To conduct this analysis, the average number of active employees for each store was calculated. Next, each week was examined to determine whether a store was 'short' more than two employees. Store-weeks were classified as 'normally/overstaffed' or 'understaffed' and Certification Form responses during normally- or overstaffed weeks were compared to responses during the understaffed weeks. The analysis shows a statistically significant increase of 6.4% in the reporting of non-exempt status during weeks when a store is understaffed. Approximately 30.4% of the weeks were reported as 'non-exempt' when stores were normally or overstaffed. However, during understaffed weeks that proportion rose to 36.8%.<sup>17</sup>

44. A similar pattern is observed in the context of store hours. For each store, the typical number of employee hours was calculated. Weeks where the number of employee hours worked dropped 10% below the average were identified. Comparing weeks with typical employee hours to weeks with below-average employee-hours reveals a statistically significant difference in the percentage of reported non-exempt weeks – SMs working during weeks with below-average staff hours were 3.8% more likely to report non-exempt status.

---

<sup>17</sup> This analysis, by definition, focuses on SMs who had varied certification form responses from week to week. As a result, SMs with 0% and 100% 'Exempt' responses were excluded from the analysis. Since a disproportionate number of SMs reported '100% exempt', the proportion of 'non-exempt' weeks here is considerably higher than when all SMs are included. Using the full sample, the percentage of 'non-exempt' weeks is 14.8%.

1 45. Employee turnover also appears to have a clear effect on SMs' reported exempt/non-  
2 exempt status. During weeks where a store lost an employee, SMs were 3.6% more likely to  
3 report that 50%+ of their hours were spent performing non-exempt duties. These results are  
4 more pronounced when assessing the effect of termination events among longer-term employees.  
5 SMs who lost an employee with 90+ days on the job were 4.4% more likely to report non-exempt  
6 status during that week.

7  
8 46. If the certifications forms failed to accurately represent the activities of Dollar Tree SMs  
9 there would be little reason to expect store level factors to vary in tandem with a SMs' reported  
10 exempt/non-exempt status. Observed here, however, is a clear set of relationships between both  
11 fixed and dynamic store level attributes. Managers who oversaw stores with fewer full-time  
12 employees and those who were faced with higher levels of customer flow were both more likely  
13 to report non-exempt status on their Certification Forms. There is an observable concurrence  
14 between weekly in-store staffing conditions and the ways in which SMs' report spending their  
15 time on a week-to-week basis. Further, as shown earlier, a manager's change in store location or  
16 district-level supervisor also tends to coincide with different certification reporting behavior.  
17 Taken together, these several facts suggest that the SMs' responses on the certifications forms  
18 accurately reflect the work that they performed in a given week. A summary of these validation  
19 analyses is shown in Exhibit 10.

20  
21 47. It should be noted that the various analyses presented here are meant only to confirm the  
22 validity of the Certification Forms that were completed by SMs. The characteristics that have  
23 been examined—staffing conditions, customer flow, store changes, etc.—do not constitute the  
24 full range of attributes one would need to study in any given week to make a determination about  
25 whether a store manager performed a majority of his/her tasks in a managerial capacity. As  
26 mentioned in the introduction of this report, managerial discretion in how time is allocated also  
27  
28

1 plays a crucial, if not predominate, role in making any reasonable assessment of whether a  
 2 manager spent the majority of his/her time performing exempt, managerial tasks.

### 3 4 **SECTION VI - STATISTICAL ISSUES THAT ARISE WHEN CLASS MEMBERS DO NOT** 5 **HAVE UNIFORM EXPERIENCES**

- 6  
 7 • How does wide variability in the percentage of time allocated to managerial duties  
 8 impact the ability to utilize random sampling approaches and statistical techniques  
 9 to predict whether a given individual non-testifying class member is above or below  
 10 the 50% line

11  
 12 48. The list of “common” issues presented by plaintiffs in this case does not address the basic  
 13 question of whether class members spend uniform or variable amounts of time performing  
 14 managerial duties. From a statistical perspective, this is the most important question since the  
 15 high variation across SMs’ practices and experiences creates several issues. First and foremost,  
 16 high variation has several implications related to the use of representative testimony to determine  
 17 a class-wide average or “typical” experience that could be used to make merits determinations.  
 18 In situations of low variability, the class average usually is a relatively good measure the  
 19 “typical” experience of class members. However, in higher variability situations, the class  
 20 average may not be “typical” of the experiences of most or all class members. For example,  
 21 suppose it were the case that half the class spent 48% of their time on managerial duties and half  
 22 spent 52% of their time on managerial duties. The class-wide average of 50% of time spent on  
 23 managerial duties would represent the “typical” experience of class members fairly accurately  
 24 since the difference between the average and each class member’s true value is only 2%. Now  
 25 suppose that half the class spent 0% and half spent 100% of their time performing managerial  
 26 duties. Again, the class wide average would be 50%, but in this instance the average would  
 27  
 28

1 represent none of the class members' experiences. Indeed, imputing the average to any class  
2 member would be an error of 50% from his or her true value.

3  
4 49. Wide variability in managerial time also impacts the ability to utilize representative  
5 testimony to get an accurate measure of class members' activities. As noted above, in situations  
6 of wide variability, the class "average" experience does a poor job of representing individual class  
7 member's actual experiences. The example above where half of the class spent 0% of their time  
8 on managerial duties and the other half spent 100% illustrates the point. If testimony of a random  
9 sample of class members were utilized, the finder of fact would have to deduce 50% managerial  
10 time based on alternating stories of 0% and 100%. Further, due to random variation in the order  
11 of testifiers, stopping the testimony at a particular number of people could result in the false  
12 impression that one side had more people that met the liability test.<sup>18</sup>

13  
14 50. High variability in managerial time also makes it more difficult to utilize statistical  
15 sampling approaches and statistical techniques to make inferences regarding the population's  
16 average experience. The basic approach calls for selecting a random sample of class members,  
17 conducting detailed individualized inquiry regarding their work experiences, and then making  
18 inferences about the population's characteristics. However, when making inferences,  
19 statisticians must account for sample to sample variance, which is sometimes referred to as  
20 sampling error. Sampling error is a byproduct of observing only a sample, or portion of the  
21 population, rather than the whole population. Since any two different random samples from the  
22 same population may have different characteristics, it is sometimes the case that variation  
23 between the two samples may result in different estimates of the population mean (average).  
24 Statistical sampling theory accounts for this issue by providing probability-based estimates of the  
25 likely size of the sampling error. To account for sampling error when making inferences,  
26 statisticians make plus or minus interval estimates around a sample statistic, which is known as a

27 <sup>18</sup> To deal with this issue one can determine if the proportion is statistically significantly above  
28 50% by computing confidence intervals around the proportion.

1 confidence interval. Confidence intervals estimate the likelihood that the parameter (statistic) in  
2 question fits within the specified interval, and are generally influenced by the size of the sample  
3 and the variability of the sample data. Higher variability increases the standard deviation, which  
4 leads to wider interval estimates, while increased sample size leads to smaller interval estimates.<sup>19</sup>  
5

6 51. Consider again the concept of making statistical inferences about the populations  
7 “average” experience based on information obtained from a random sample of class members.  
8 Suppose we drew a random sample of 30 class members and determined that they spent on  
9 average 53.0% of their time on managerial duties with a standard deviation of 10%, which  
10 implies that 95% of the SMs in the sample had managerial time that ranged between 35% and  
11 70%. Extrapolating this result back to the population would result in the conclusion that at a 95%  
12 level of confidence, the true average of the population is between 49.4% and 56.6%, a result  
13 which, unfortunately, is legally ambiguous relative to the 50% managerial time test.  
14 Conceptually, the ambiguous result above could be avoided if there was less variation across  
15 SMs, or we had a larger sample. For example, suppose the standard deviation were 8% instead of  
16 10%. If that were the case then the confidence interval range would narrow to between 50.1%  
17 and 55.9%, which would be considered statistically significantly above 50%. Increasing the  
18 sample size has the same effect of narrowing confidence intervals. Taking the original example  
19 and increasing the sample size from 30 to 45 would also narrow the confidence interval to  
20 between 50.1% and 55.9%.  
21  
22  
23  
24  
25

26 <sup>19</sup> Confidence intervals of an average or mean value are estimated by computing the standard  
27 error of the mean (Standard deviation / square root of sample size) and then multiplying the  
28 standard error by 1.96, which equates to a 95% confidence interval. 95% confidence intervals are  
standard in the social sciences.

- **How does wide variability in the percentage of time allocated to managerial duties impact the ability to utilize information derived from a random sample of class members to make extrapolations regarding the class wide average managerial time and the proportion of class members who spent more than 50% of their time performing managerial duties**

52. Wide variation in managerial time creates similar problems with confidence intervals if one seeks to utilize statistical techniques, such as multivariate regression, to estimate the managerial time for class members who are outside of the sample. In this case, a statistical model (or, regression equation) would ‘predict’ percentage of time spent on managerial duties (the dependent variable) as a function of several known “independent” variables (such as tenure, store size, sales volume, etc.). The output of the model includes: the adjusted r-squared statistic, which measures how well the independent variables explain the variation in the dependant variable, a point estimate, which, in turn, is surrounded by a confidence interval. Generally, models have higher adjusted r-squared statistics, and consequently, better predictive power if there are strong statistical relationships between the independent and dependent variables. However, a pattern of wide variation across SMs is indicative that strong relationships may not exist. Consequently, the end result of such a process may be a regression model that predicts with 95% confidence that a manager spent between 40% and 60% of his or her time performing managerial duties. Obviously, this conclusion is of little use in terms of addressing the questions at hand.

53. Variation in managerial time could also result in significant portions of the class on both sides of the liability test. If that were true, then it is guaranteed that whatever decision is rendered by a jury, or other finder of fact, will be wrong for at least a portion of the class. Under these circumstances, the question becomes, how much error is too much? For example, suppose that 70% of the class was classified properly and 30% was not. A class wide finding for the defendant would result in those class members with valid claims receiving nothing. Had they pursued their case individually, they would have been better off. Now suppose that the statistics

1 were reversed to 30% classified properly and 70% misclassified. If one were unable to determine  
2 precisely which class member fell into which liability bucket, a “rough justice” approach would  
3 be necessary. Class members with valid claims would receive 70 cents on the dollar, while class  
4 members who did not have valid claims would receive the same amount. In addition to robbing  
5 class member Peter (has claims) to pay class member Paul (no claim), a finding for the plaintiffs  
6 would result in the defendant paying damages to a large number of individuals who have no  
7 claim.

8  
9 54. Wide variation in managerial time that results in portions of the class on both sides of the  
10 liability test also impacts the ability to utilize representative testimony / information to derive  
11 class wide liability. For example, suppose the trial plan called for merits to be determined based  
12 on the proportion of randomly selected class members who were determined to have spent more  
13 than 50% of their time on managerial duties. When statisticians extrapolate a proportion from a  
14 sample to a population, a 95% confidence interval is computed. Generally, the size (width) of  
15 the confidence interval increases as the proportion gets closer to 50% and narrows as the sample  
16 size increases. For example, assume we selected a random sample of 30 people and determined  
17 that 60% were above the 50% managerial line. This sample size and proportion will result in a  
18 confidence interval of plus or minus 17.5%. Thus, one would conclude that between 40.8% and  
19 79.2% of SMs spent more than 50% of their time on managerial duties.<sup>20</sup> Again, we are left with  
20 a legally ambiguous result. Suppose the proportion above 50% stayed at 60% of the sample, but  
21 the sample size was increased to 104 people. The confidence interval would narrow and the  
22 resulting conclusion would be that between 50.1% and 70% of the class spent more than 50% of  
23 their time on managerial duties. Alternatively, suppose it was the case that the proportion derived  
24 from the sample was 80/20 rather than 60/40. Under this scenario, a sample size of 30 would  
25 yield a 95% confidence interval ranges between 64% and 96% for the proportion of the class that  
26 spent more than 50% of their time on managerial duties. This would lead to a finding for the  
27 defendant. Suppose that instead the proportions were reversed to 20/80. The 95% confidence

28 <sup>20</sup> Continuity correction was utilized in confidence interval estimates.



1 interval for this scenario would be that between 4% and 36% of SMs spent more than 50% of  
2 their time performing managerial duties.

### 3 4 **SECTION VII – OVERVIEW OF FINDINGS FROM THE 2002-2003 SURVEY OF** 5 **DOLLAR TREE SMs** 6

7  
8 55. In considering the relevance of the 2002-2003 survey, the question becomes what  
9 operationally has changed and did those changes result in changes in SMs behavior, more  
10 specifically did significantly alter behavior such that SMs now had relatively uniform  
11 experiences. It is my understanding that some new tools, such as automatic replenishing for  
12 certain products and the compass time keeping and scheduling software, have been introduced  
13 subsequent to the time period when the survey was conducted. While these new tools may aid  
14 managers in ordering product and scheduling employees, they are unlikely to produce uniformity  
15 in the time spent performing specific tasks and exempt tasks overall. As discussed above, the  
16 certification data demonstrates a pattern of wide variability across managers in terms of the  
17 percentages. This finding is consistent with the 2002-2003 survey findings of wide variation in  
18 terms of what percentage of their time SMs allocated to various duties and managerial duties  
19 overall. In other words, the data demonstrates that the variability that existed during the 2002-  
20 2003 period still exists today.

- 21 • **The Survey Captured Information Regarding How Managers Allocated Their Time**  
22 **Between The Various Tasks They Perform and How Frequently They Exercise**  
23 **Discretion and Independent Judgment in Operating Their Store**  
24

25 56. In 2002-2003, Resolution Economics conducted a survey of current and former California  
26 Dollar Tree SMs. The survey, completed by 74 respondents, was aimed primarily at assessing  
27 SMs' allocation of their time across a variety of exempt/non-exempt tasks. Respondents were  
28 also asked a variety of questions concerning their individual decision making authority with

1 regard to store operations. The study found that Dollar Tree SMs predominately reported  
2 working in managerial, exempt capacities and that each manager's allocation of time across the  
3 task groups differed considerably. Further, the observed variability in how SMs reported  
4 spending their time was very high. This finding contradicts plaintiffs' notion that Dollar Tree  
5 SMs are subject to strict company-wide policies or uniform procedures. Rather, the survey's  
6 results suggest that each manager tends to allocate her/her time quite differently, thus making the  
7 claims in this case unsuitable for class-wide analysis using common statistical evidence.

8  
9 57. To assess the proportions of time that SMs were devoting to exempt/non-exempt  
10 activities, survey respondents were presented with three major categories of activities:  
11 administrative, stock room, and sales floor. Within each of those groupings, SMs were provided  
12 with a list of more detailed sub-groups of tasks. They were asked to assign a percentage to the  
13 amount of time spent performing each (e.g. supervising employees to insure completion of  
14 assigned tasks, reviewing and analyzing sales and profit center reports, disciplining and  
15 terminating employees, unloading trucks and staging freight, conducting an inventory of the stock  
16 room, cashiering, selling to customers, etc). The responses were used to estimate each manager's  
17 proportion of exempt time.

18  
19 • **The Survey Demonstrates that a Portion Of Respondent SMs Report Spending**  
20 **More Than Half of Their Time Performing Managerial Duties and a Portion of**  
21 **Respondent SMs Did Not**

22 58. As discussed in detail below, this survey indicates that a significant majority of SMs  
23 report spending more than half of their time performing managerial duties. Further, the average  
24 managerial time across all survey respondents was in excess of 50%. More specifically, the  
25 Dollar Tree SMs conducted by Resolution Economics in 2002-2003 demonstrated that  
26 approximately two out of three survey respondents (67%) spent more than half of their time on  
27  
28

1 managerial duties.<sup>21</sup> Exhibit 11 presents the percentage of time spent performing managerial  
 2 duties reported by the survey respondents. Respondents have been grouped into intervals ranging  
 3 from 30% managerial time to 80% managerial time, as reported on the survey task list. As seen  
 4 in the chart, the majority of Dollar Tree SMs are in the groupings that fall above the 50%  
 5 threshold. Exhibit 12 presents similar information except that the proportion of managerial time  
 6 for each survey respondent is presented as single bar in the chart. From manager to manager, we  
 7 again observe a pattern of wide variability in the proportion of time devoted to exempt-status  
 8 tasks. As evidenced by these Exhibits 11 and 12, the data suggests that some SMs perform their  
 9 job in a manner consistent with the exemption and others do not. Given that this pattern of  
 10 variability in experiences continues to present day, it is likely that many SMs will report that they  
 11 worked in a manner that met the requirements for the exemption and some will not. Thus,  
 12 individual inquiry may be required to make determinations regarding which SMs who are not  
 13 asked to provide information had experiences similar to those who worked in an exempt manner  
 14 and which had experiences similar to those who did not.

15 • **Whatever Systematic Policies, Practices, and Procedures Exist Did Not Result In**  
 16 **SMs Reporting That They Spent Uniform Amounts of Time in Various Areas of the**  
 17 **Store**

18 59. SMs not only varied in the percentage of exempt time that they reported, but they also  
 19 differed in terms of how much time they spent in various areas of their stores. Exhibits 13, 14,  
 20 and 15 present the percentage of total time SMs' report spending in the office, sales floor, and  
 21 back room, respectively. Very few SMs reported splitting their time in similar or equal ways  
 22 across the three areas. It is important to note that these exhibits do not distinguish between  
 23 managerial and non-managerial tasks, rather they depict the percentage of time spent performing  
 24 all duties in a particular area of the store. Thus, these exhibits demonstrate that there are no  
 25 systematic factors that result in SMs spending similar amounts of time in the same area of their  
 26

27 <sup>21</sup> The survey was conducted by mail. All surveys were completed by respondents and signed under  
 28 penalty of perjury.

1 stores. Since the universe of tasks performed in each area of the store is different, (truck  
 2 unloading only happens in the back room, cashiering only happens on the sales floor), this finding  
 3 of wide variability in terms of the percentage of time SMs spend in various areas of the store  
 4 would be expected to drive variability in terms of the percentage of time SMs spend performing  
 5 various individual tasks, as well as, their overall managerial time.

6  
 7 • **The Survey Data Demonstrates That There Is Wide Variability Across SMs in the**  
 8 **Percentage of Time Allocated to Managerial Duties**

9 60. Exhibits 11 through 15 suggest that SMs make decisions regarding what tasks they  
 10 themselves perform, what tasks they decide to delegate to others, and how much time they spend  
 11 working in various areas of the store. Thus, it is clear that whatever common set of policies,  
 12 practices, and procedures exist, they do not influence SMs' behavior with regard to what duties  
 13 they choose to perform and where they perform them.

14  
 15 61. The responses indicated that a considerable majority, nearly 67% of SMs, regularly spent  
 16 50% or more of their time performing exempt, managerial work (these results were shown in  
 17 Exhibit 11). The average percentage of exempt time across all survey respondents was 55.6%. If  
 18 one were to assume that there was non-response was random and not systematic, the 95%  
 19 confidence interval around that estimate ranged from 51.8% to 59.4%.<sup>22</sup> Substantively, this  
 20 indicates that the average across all survey respondents was above 50%, even when accounting  
 21 for error introduced by the sampling process. More importantly, the results also showed that  
 22 approximately two-thirds of SMs were above the 50% threshold (these results were displayed  
 23 graphically in Exhibit 12).

24  
 25  
 26 \_\_\_\_\_  
 27 <sup>22</sup> The argument that non-response is an issue implies that there are systematic and meaningful  
 28 differences across class members. I am assuming that plaintiffs believe class members did not  
 have systematically different experiences.

1       • **The Survey Shows Wide Variation in Terms of the Percentage of Time SMs Report**  
 2       **Allocating to Groups of Tasks**

3       62. In addition to showing a high level of exempt-status reporting, the study also revealed  
 4       considerable variation across the various task groupings. Different SMs reported spending very  
 5       different proportions of their time handling the activities in the list. For example, a handful of  
 6       SMs reported spending as much as half of their time unloading trucks, staging freight, organizing  
 7       and categorizing merchandise in the stock room, conducting inventory in the stock room, and  
 8       cleaning the stock room. At the same time, other SMs reported virtually no time performing this  
 9       set of tasks and others reported, on average, spending about 10-20% of their time engaged in  
 10      these non-exempt activities. These results are shown in Exhibit 16. With regard to supervising  
 11      cashiers, approving returns at the cashier, and responding to customer complaints some SMs  
 12      reported spending as little as 1% of their time performing these tasks while other SMs reporting  
 13      spending as much as 18% of their time engaged in these supervisory activities. Exhibit 17 shows  
 14      the percentage of time reported for each manager for this set of tasks. Manager-level variation as  
 15      observed in Exhibits 16 and 17 was present, to varying degrees, across each of the task categories  
 16      and sub-groups.

17  
 18      • **The Survey Data Demonstrates Variation Across SMs in Terms the Extent They**  
 19      **Exercise Discretion and Independent Judgment**

20      63. Another important finding of the survey concerned the issue of managerial discretion.  
 21      SMs were presented with a series of tasks and asked whether they were allowed to exercise  
 22      independent judgment in performing each activity. Responses to the survey indicated a clear  
 23      sense of discretion among SMs with regard to the day-to-day operation of their stores. A majority  
 24      of the respondents to the survey reported having the discretionary authority to initiate sales  
 25      promotions, to develop strategies for the merchandising and marketing of products, and for the  
 26      hiring, scheduling, disciplining, and termination of associates. Of twelve individual decisions  
 27      listed, 90% of the surveyed SMs indicated that they had decision making authority for at least six  
 28

1 of the tasks. An overview of SMs' survey responses are showing in Exhibit 18.

2  
3 64. The survey also found that while SMs tended to report having the discretion to perform  
4 tasks relating to day-to-day store operations, they commonly differed in terms of how often they  
5 utilized such discretion. In addition to being asked *whether* they had the authority to make  
6 independent judgments regarding store sales strategies, staffing, etc., respondents were asked to  
7 report how often they engaged in exercising such authority. Here, the observed variability was  
8 considerable. For example, when asked what percentage of promotional activities in the store  
9 were the result of individual initiative (as opposed to company-wide promotions) responses  
10 ranged from 0% to 90%. Similarly, approximately 80% of SMs indicated that they had the  
11 authority to tailor their store's merchandise to their location-specific customer base. Though,  
12 while some SMs indicated that they were almost exclusively responsible for determining the  
13 merchandise that would be supplied in their store, others indicated that they rarely exercised such  
14 discretion. These results are shown in Exhibits 19 and 20, respectively.

15  
16 65. Each of these findings is in conflict with the notion that Dollar Tree SMs were subject to a  
17 set of common policies or procedures that dictated the ways in which they could oversee their  
18 stores. Much the opposite, the survey results not only suggest that SMs varied considerably in  
19 how they allocated their time across exempt and non-exempt tasks, but that each had considerable  
20 leeway to exercise independent judgment, if they chose to do so.<sup>23</sup>

- 21  
22 • **Wide Variation in Managerial Time Allocations Limits The Usefulness of Statistical**  
23 **Techniques to Use Known Attributes to Predict Whether a Given Class Member**  
24 **Worked in an Exempt Capacity**

25 66. In attempting to understand the variation observed in SMs' time allocations, the study  
26 included a variety of regression analyses. SMs' proportions of reported exempt time were

27 <sup>23</sup> The issue of managerial discretion was also discussed consistently in the deposition testimony  
28 submitted in this case. This deposition testimony will be addressed in detail later in this report.

1 modeled statistically using a variety of observable factors including annual sales of the store,  
 2 gross square footage of the store, manager tenure, and the total number of ‘yes’ responses to  
 3 questions concerning managerial discretion. The various models suggested that SMs’ perception  
 4 of their authority to make decisions, as reported on the survey, was one of the measures most  
 5 strongly associated with higher reported levels of exempt-status hours.

6  
 7 67. However, even taking these various factors into consideration, the statistical models were  
 8 able to explain only 16% of the total variation in SMs’ reported proportions of exempt-status  
 9 time. In other words, using these measurable factors in a multivariate analysis was a very  
 10 imprecise way to arrive at estimates for SMs that did not complete the survey’s ‘time diary’. The  
 11 estimates from such a model are likely to be accompanied by very large margins of error – for  
 12 example, the model might establish with 95% certainty that a SMs’ average fell somewhere  
 13 between 20% and 80%. This would make an individual-level determination of exempt/non-  
 14 exempt status impossible in the absence of an extensive individualized fact gathering effort.  
 15 Exhibit 21 shows each manager’s estimated proportion of exempt time based on the model, as  
 16 well as the range of uncertainty around each prediction.

17  
 18 **SECTION VIII – HOW TO EXAMINE WHETHER A COMMON SET OF POLICIES,**  
 19 **PRACTICES, PROCEDURES, TRAINING, AND SUPERVISION RESULTED IN**  
 20 **UNIFORMITY IN WORK ACTIVITIES**

21  
 22 68. According to plaintiffs, SMs at Dollar Tree perform their duties without discretion at the  
 23 behest of regional or District Managers. In their filing, plaintiffs write: “each store manager  
 24 remained (and remains) tightly constrained by the instructions and oversight of their respective  
 25 district manager.”<sup>24</sup> The implication here is that SMs function as SMs in name only, following  
 26 the lead of computer-directed inventory systems and spending “virtually all of their

27  
 28 <sup>24</sup> First Amended Complaint, p7.

1 time...performing regular hourly employee tasks.”<sup>25</sup> The deposition testimony of SMs presented  
 2 in this case tends to contradict this notion. SMs were seldom hesitant to offer testimony  
 3 describing the supervisory activities that they performed as SMs in Dollar Tree stores. Some  
 4 SMs, in fact, testified that supervision of the store was a ‘constant’ facet of their job. In his  
 5 deposition testimony, Charles Banks responded to questioning about his supervisory role in the  
 6 following way:

7  
 8 Mr. Banks: Supervising? Giving out duties. Training. Teaching. Basically everything  
 9 on this list [referencing the 17 ‘Certification of Duties’ form tasks].

10 Mr. Vandall: Okay. So in the performance of those 17 tasks, you were constantly  
 11 involved in supervision; is that what you mean?

12 Mr. Banks: Correct.<sup>26</sup>

13 Mr. Banks’ testimony is accompanied by testimony from numerous other SMs who reported that  
 14 they were also responsible for a variety of supervisory tasks. For example, Kyle Chapman  
 15 testified that he had the authority to hire cashiers without the approval of his district manager.<sup>27</sup>  
 16 He later testified that his recommendation of a candidate for the Assistant Store Manager position  
 17 was followed and the candidate was hired.<sup>28</sup> Diana Durston testified that it was her job to  
 18 discipline employees using formal verbal and written warnings and that she was responsible for  
 19 conducting annual performance evaluations.<sup>29</sup>

20 69. Store Manager Bob Hodge indicated that he made decisions regarding the delegation of  
 21 the various tasks that needed to be completed in the store. His testimony (shown below) provides  
 22 a good example of how managerial discretion can lead to variation in outcomes with regard to the  
 23

24 <sup>25</sup> First Amended Complaint, p5.

25 <sup>26</sup> Deposition of Charles Banks, 28:2-8.

26 <sup>27</sup> Deposition of Kyle Chapman, 80:5-15.

27 <sup>28</sup> Deposition of Kyle Chapman, 80:17-81:11.

28 <sup>29</sup> Deposition of Diana Durston, 35:18-38:8.



1 amount of time spent performing exempt/non-exempt tasks:

2  
3 Mr. Vandall: Okay. Now if you're walking in the store and you happen to see something  
4 on the floor that a customer could slip on, what do you typically do to deal with that  
5 situation?

6 Mr. Hodge: Depending on what it is. If it's a piece of cardboard I might pick it up. If it's  
7 a bigger project, I call an associate over to clean it up.

8 Mr. Vandall: So, you make a decision about whether to delegate or do it yourself; is that  
9 correct?

10 Mr. Hodge: A decision is made, yes.<sup>30</sup>

11 These types of decisions are likely to contribute significantly to the variation that is observed in  
12 both the survey data and the Certification Form responses. Some SMs, for example, will  
13 routinely handle such issues by themselves without delegating to an associate – a spill or a poorly  
14 stocked shelf will be remedied by the manager. With each decision of this sort that is made, the  
15 manager spends more of his/her time performing non-exempt duties. Other SMs, however, will  
16 clearly understand the implications of their decision not to delegate and will choose to delegate  
17 these tasks as often as possible. The end result is variation from manager to manager in how they  
18 report spending their time. This variation is a by-product of managerial discretion concerning  
19 how to handle these situations as they arise.

20 70. If it were true that SMs had limited discretion and inhibited decision-making authority, the  
21 expected empirical result would be near-uniformity in the way that SMs report spending their  
22 time. SMs, across the board, would report very little time performing exempt tasks and the  
23 variability in the proportions across SMs would fluctuate only minimally. The 'Certification of  
24 Duties' forms (and the results of the survey conducted prior to the class period) show this to be  
25 untrue.

26  
27  
28 <sup>30</sup> Deposition of Bob Hodge, 27:12-25

1 71. To examine the question of whether systematic processes, such as corporate policies,  
2 practices, procedures, and training resulted in uniformity in work activities, one can examine the  
3 extent of variability in time allocations across SMs. In alleging that putative class members  
4 performed their jobs with uniformity and consistency and that store operations were dictated in  
5 large part by District Managers, plaintiffs are implicitly assuming that differences across stores in  
6 terms of labor volume drivers, such as sales volume, customer flow, and product mix, employee  
7 factors, such as associates' productivity, experience and skill sets, motivation, and managerial  
8 style do not result in variability of SMs' behaviors and experiences. Instead, under plaintiffs'  
9 theory, SMs are "forced" to behave in similar manners by whatever systematic processes and  
10 common training and supervision approaches exist.

11  
12 72. As shown in the discussion of the survey study, plaintiffs' contention that SMs lack  
13 discretionary authority is ill-founded. SMs at Dollar Tree routinely reported that they are  
14 responsible for making decisions regarding staffing issues, promotional offers, and which items  
15 will be stocked in their stores. Further, part of the equation that plaintiffs have not considered, is  
16 that there may be differences in employee and manager quality and managerial style that could  
17 influence what activities SMs perform in the stores. For example, suppose the labor model  
18 allocates an expected average of 100 hours to complete task A. Suppose Store 1's well-trained,  
19 motivated, and highly productive non-exempt employees push to complete the task in only 90  
20 hours, or 10 hours faster than the expected time per the labor model's allocation. In contrast,  
21 suppose it takes Store 2, which has newer, less productive non-exempt employees 110 hours to  
22 complete the same task. The end result is that the manager of Store 1 has 10 additional non-  
23 exempt hours that can be allocated elsewhere, while the manager of Store 2 must make-up 10  
24 non-exempt hours by either creating greater than expected efficiency in completing some other  
25 task, by exceeding his labor budget, or by providing more non-exempt labor himself.

73. The paragraph above highlights the impact that a manager's leadership could have upon whether there is an excess or shortfall of non-exempt labor hours in the store. SMs who are good motivators and are effective at training their employees are more likely to have more productive employees with longer tenures in their stores. In contrast, ineffective SMs are more likely to have higher turnover and less productivity, which may result in them providing more non-exempt labor hours themselves. Managerial style will also play a role in determining what activities the manager performs, and, consequently, how much time they may spend performing exempt duties. For example, SMs who delegate and monitor would be expected to have less time spent performing non-exempt duties, as compared to SMs who are more "hands on" or less skilled at delegating tasks to others. It is apparent that plaintiffs believe that differences in managerial quality and style have not resulted in differences in how SMs perform their jobs. Instead, plaintiffs' theory is that common training programs have resulted in common behavior across SMs. However, in considering whether plaintiffs' theory is true, one must also ask whether the common training has resulted in common managerial performance. The reality is that some SMs' performance exceeded expectations, some SMs' performance met expectations, and some SMs' performance failed to meet expectations over the proposed class period. Given this disparity in managerial performance, it is unlikely that all SMs performed their jobs in similar manners. Consider again the example of the SMs of Store 1 and Store 2 above. In Store 1, where the manager had a team that beat the labor model allocation, there was an excess of non-exempt labor hours. In contrast, the manager of the team in Store 2 that worked slower than average had to deal with a short-fall of labor hours that could have been allocated to other non-exempt tasks in the store. One reason for these different outcomes is differences in SM performance.

74. The paragraphs above outline two competing views. Plaintiffs' view is that a uniform set of corporate policies, practices, procedures, and training result in uniformity in how SMs perform their job, while the alternative explanation is that store and manager specific factors drive variability across SMs in terms of how they allocate their time among the various tasks they may

1 perform. If we observe limited variability across class members in terms of individual SMs'  
2 percentage of time spent in various areas of the store and the percentage of time spent performing  
3 particular groups of duties, then it is likely that the policies and procedures that exist strongly  
4 govern SMs' activities and behavior. On the other hand, if plaintiffs' theory that policies,  
5 practices, procedures, and training govern SMs' activities is incorrect, then one would see  
6 variability in how SMs spend their time. For example, suppose we sought to test the variability  
7 in the work activities of cashiers working for a retail store chain that had a policy which required  
8 cashiers to spend 95% of their time ringing up customers or waiting to ring up customers. If one  
9 wanted to test what percentage of work time cashiers spent stocking away from the cash register  
10 there would be no meaningful variability. Since each cashier must spend 95% of their shift at the  
11 cash register, the most they can differ in terms of their time spent stocking would be 5%, which  
12 translates into a maximum of 24 minutes out of an 8-hour shift.<sup>31</sup> In other words, variability was  
13 limited because the 95% cashiering policy forced both cashiers' days to be the same except for at  
14 most 24 minutes.

15  
16 75. The example above demonstrates how strong adherence to policies could systematically  
17 limit variability in work activities across employees in a similar role. In other words, in this  
18 example, a common set of policies, practices, and procedures resulted in a relatively uniform  
19 outcome. Now, suppose that instead of a policy which required that cashiers spend 95% of their  
20 time ringing up or waiting to ring up customers, the policy was changed so that SMs could  
21 allocate cashiers to other tasks when customers were not present. Variability in activities would  
22 be expected to increase significantly due to several factors. First, it is likely that the percentage of  
23 work time actually spent ringing-up customers would vary based on shift-specific volume drivers,  
24 such as sales volume and customer count. For example, suppose that in a low volume store the  
25 cashier's actual time spent ringing-up customers was 3-hours, or 38% of an 8-hour shift. This

26  
27 <sup>31</sup> Because 95% of the shift was allocated to cashiering and waiting to cashier, the maximum  
28 range of difference in stocking time is between 0% and 5%. Applying 5% to an 8 hour shift  
yields 0.4 hours, which corresponds to 24 minutes.

1 would leave approximately 5-hours per shift that could be allocated to other duties. In contrast,  
2 suppose that in a high volume store the cashier spent 5.5 hours, or 69% of his or her shift ringing-  
3 up customers. If one were to compare these two cashiers, the difference in cashiering time would  
4 be 2.5 hours per shift, or 31% of the shift. This difference, in turn, drives the variability of how  
5 much "available time" each cashier has that can be allocated to other tasks. Further complicating  
6 matters is that there are a multitude of tasks the cashier could be assigned to, such as stocking,  
7 cleaning, fronting-and-facing product, merchandising product, and re-pricing product, which  
8 could then be allocated differently based on the needs of the store that day and what duties are  
9 assigned to the other employees working on the same shift. The end result of the policy change is  
10 that cashiers go from uniform experiences to considerably more varied experiences. Thus, a  
11 policy change can result in a significant variability in work activities for non-exempt employees  
12 who are asked to perform a relatively limited set of duties.<sup>32</sup>

13  
14 76. The examples above contrast two work environments; one where a systematic process  
15 governs behavior versus another where policies do not strongly influence employees' behavior.  
16 If it were the case that a systematic process governs Dollar Tree SMs' behavior, then one would  
17 expect to see relatively little variation across SMs in terms of how they allocate their time to the  
18 various tasks they perform. If SMs allocate their time to various sub-categories of tasks in similar  
19 percentages, the corresponding percentage of time spent on managerial duties would be relatively  
20 uniform. However, the results on the Certification Forms and of the survey study responses both  
21 show wide variability across SMs in terms of the percentage of time spent in various areas of the  
22 store, the percentage of time spent on various groups of tasks, and the percentage of time spent on  
23 managerial duties overall. This suggests that plaintiffs' theory concerning managerial discretion  
24 and decision-making authority is incorrect.

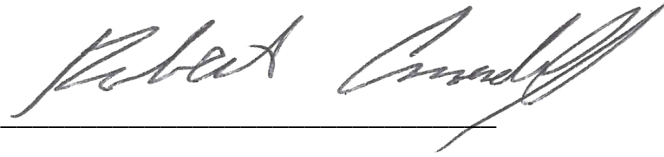
25  
26 <sup>32</sup> It should be noted that we have not addressed instances where policies that govern how  
27 employees spend their time exist, but, in practice, are not adhered to across the stores, which  
28 would again result in greater variability in work activities of cashiers.

**SECTION IX – CONCLUSION**

77. At this stage of the case, plaintiffs have failed to acknowledge the wide variability observed in SMs' experiences. This is not surprising given that plaintiffs would also have the Court believe that SMs possess little, if any, ability to dictate the terms on which their stores operate. In considering this theory it is important to note that SMs have the discretion to decide which tasks they perform themselves and which tasks they assign to others. The deposition testimony and certifications data indicate that SMs consistently report having decision-making authority for numerous discretionary tasks including product ordering, sales promotions, staff scheduling, employee hiring, disciplining, and terminations. The survey study supports this conclusion. The discretion afforded to SMs by Dollar Tree manifests itself in observable differences in the ways that SMs allocate their time. Variability is observed across nearly every manager and across every task grouping. This is not the implied result from the account provided by plaintiffs – their account establishes and expectation of relative uniformity in the ways that SMs spend their time.

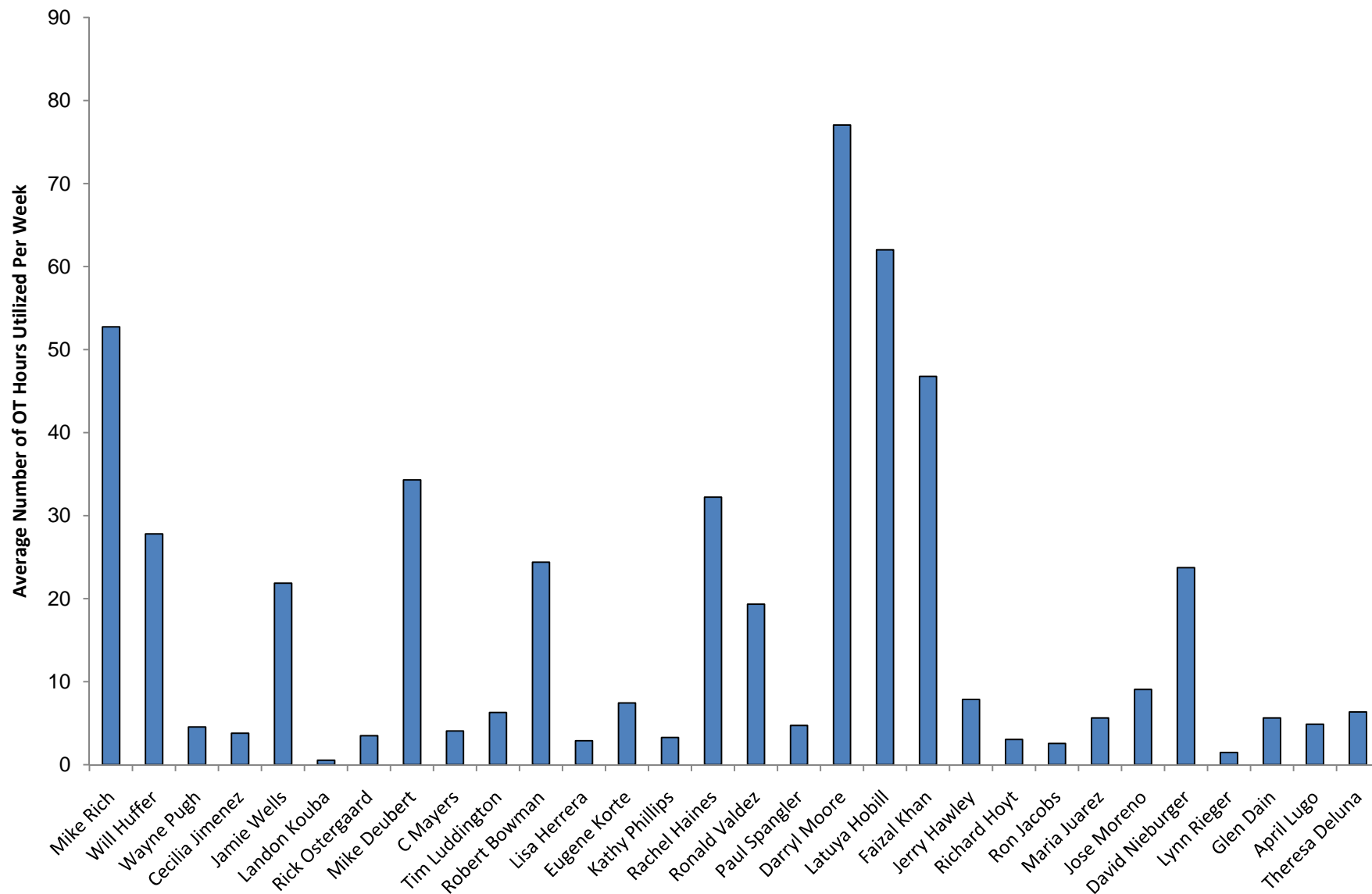
78. In the presence of such variability, it becomes difficult to rely on statistical estimation as a means for determining liability or damages on a class-wide basis. Observable characteristics such as store size, sales volume, and tenure will only provide a limited amount of information before less-easily observable characteristics such as managerial discretion, judgment, and skill enter as complicating factors. For this reason, the need for extensive individual inquiry is likely, as it is improbable that representative evidence will be useful in making generalizations about the class as a whole without significant error.

1 I declare under penalty of perjury under the laws of the State of California that the foregoing is  
2 true and correct and that this declaration was executed in Beverly Hills, California on May 7,  
3 2010.

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6

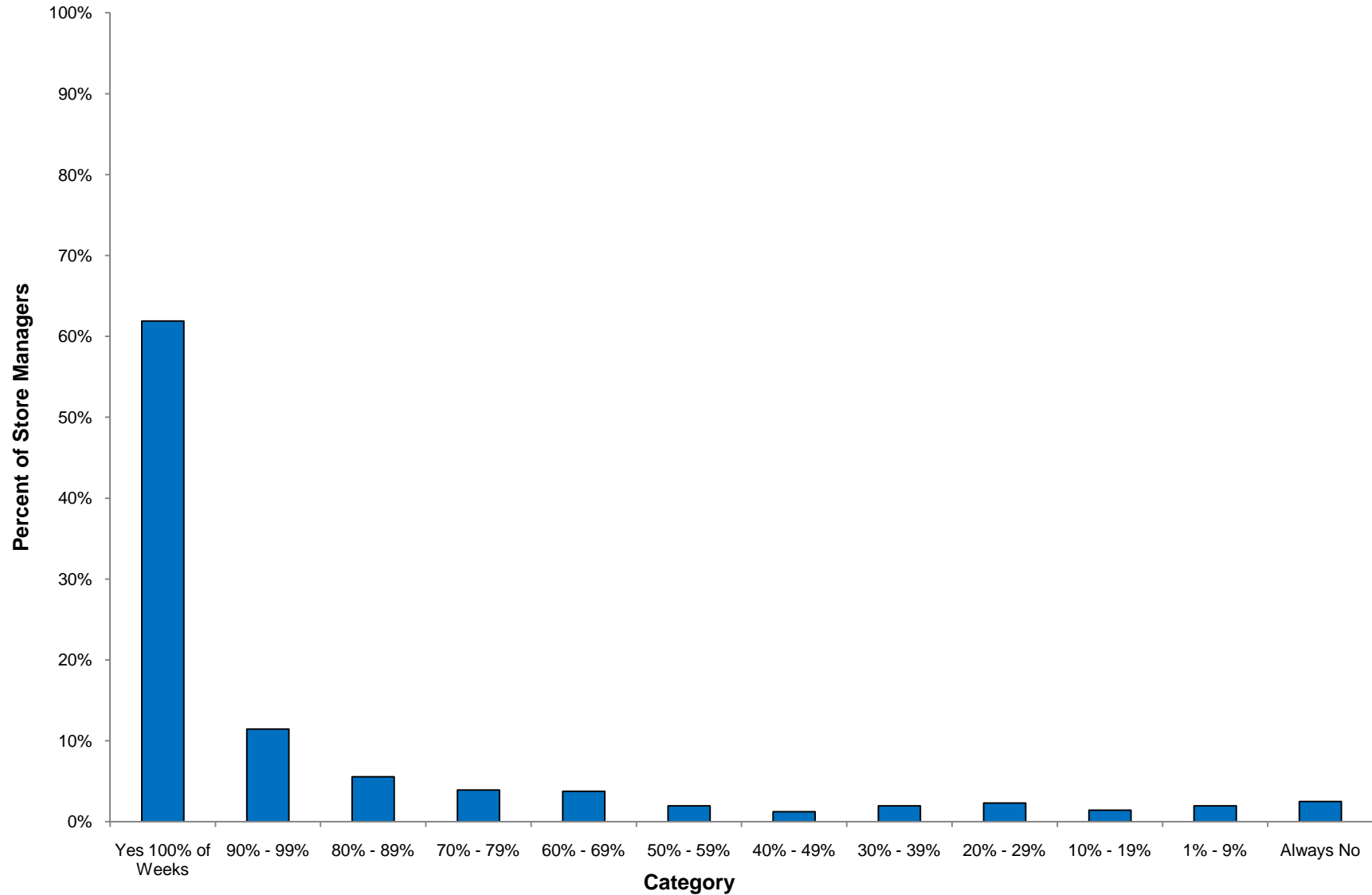
7 Robert Crandall, MBA  
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## Average Number of Overtime Hours Utilized Per Week for 30 Randomly Selected Managers

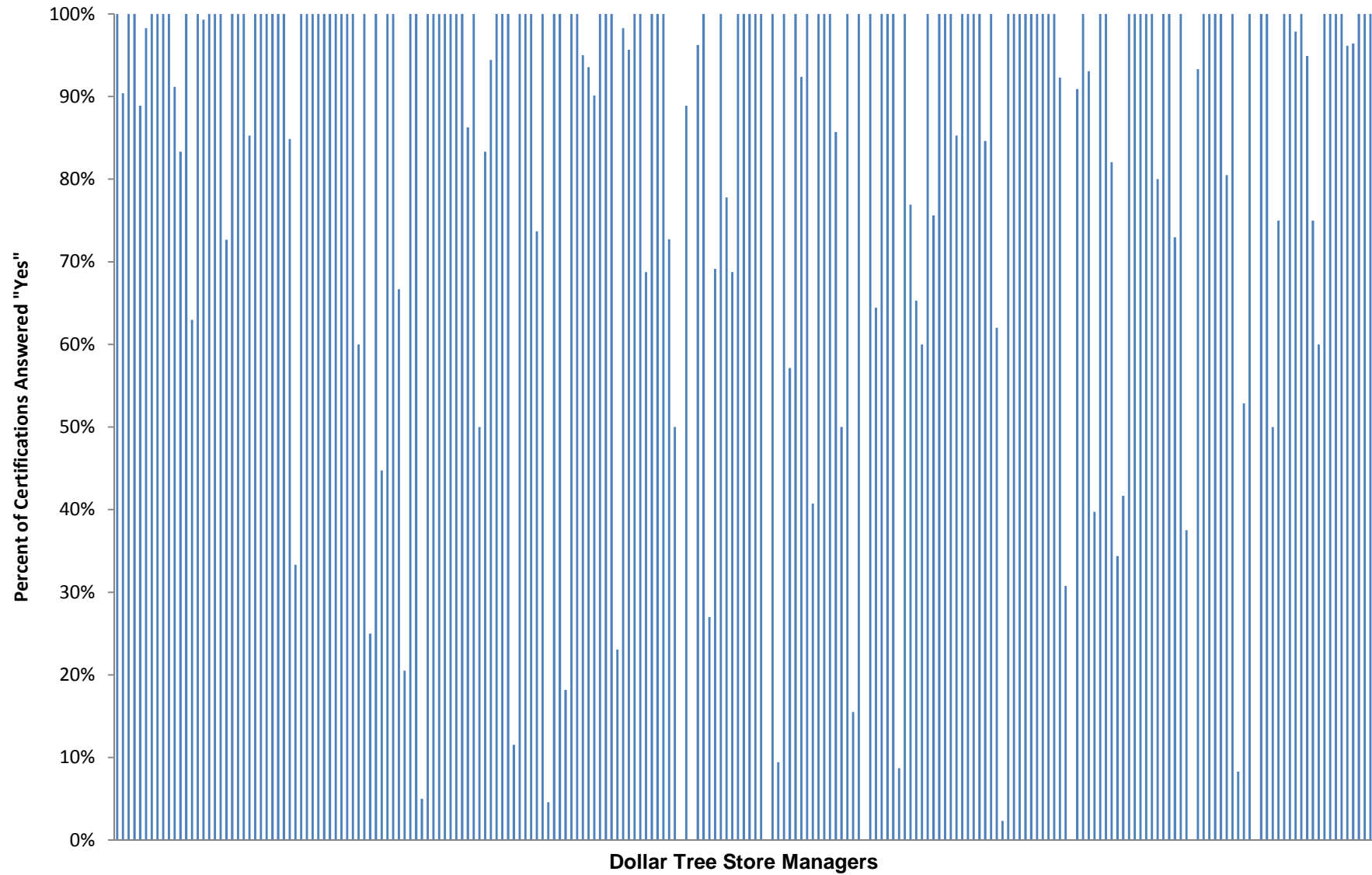




## Summary of Managers' Weekly Responses to the 'Certification of Duties' Form



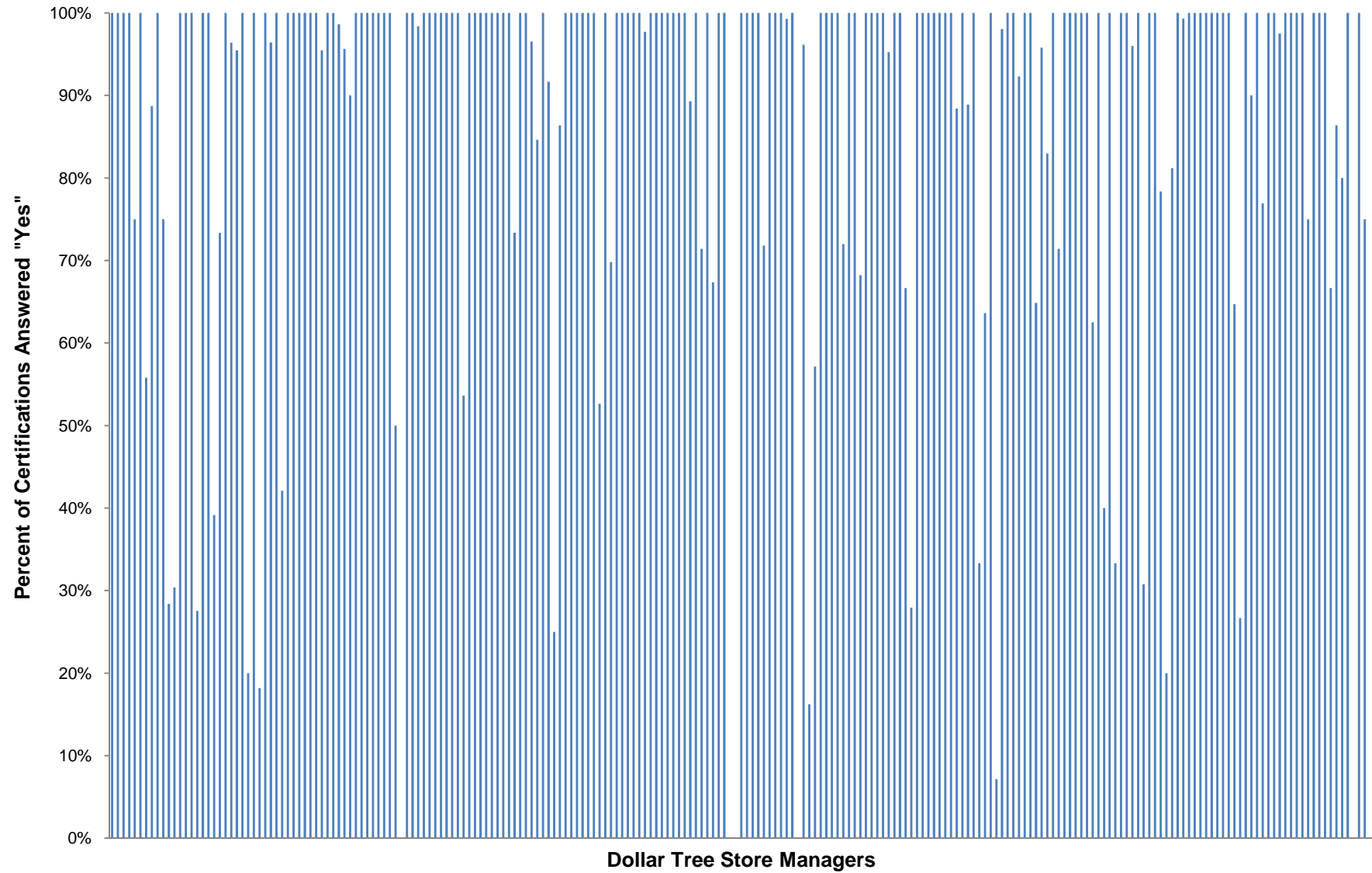
**Variation in the Percentage of 'Yes' Responses Reported on Weekly  
'Certification of Duties' Forms  
- ALL MANAGERS: Chart 1 of 3 -**



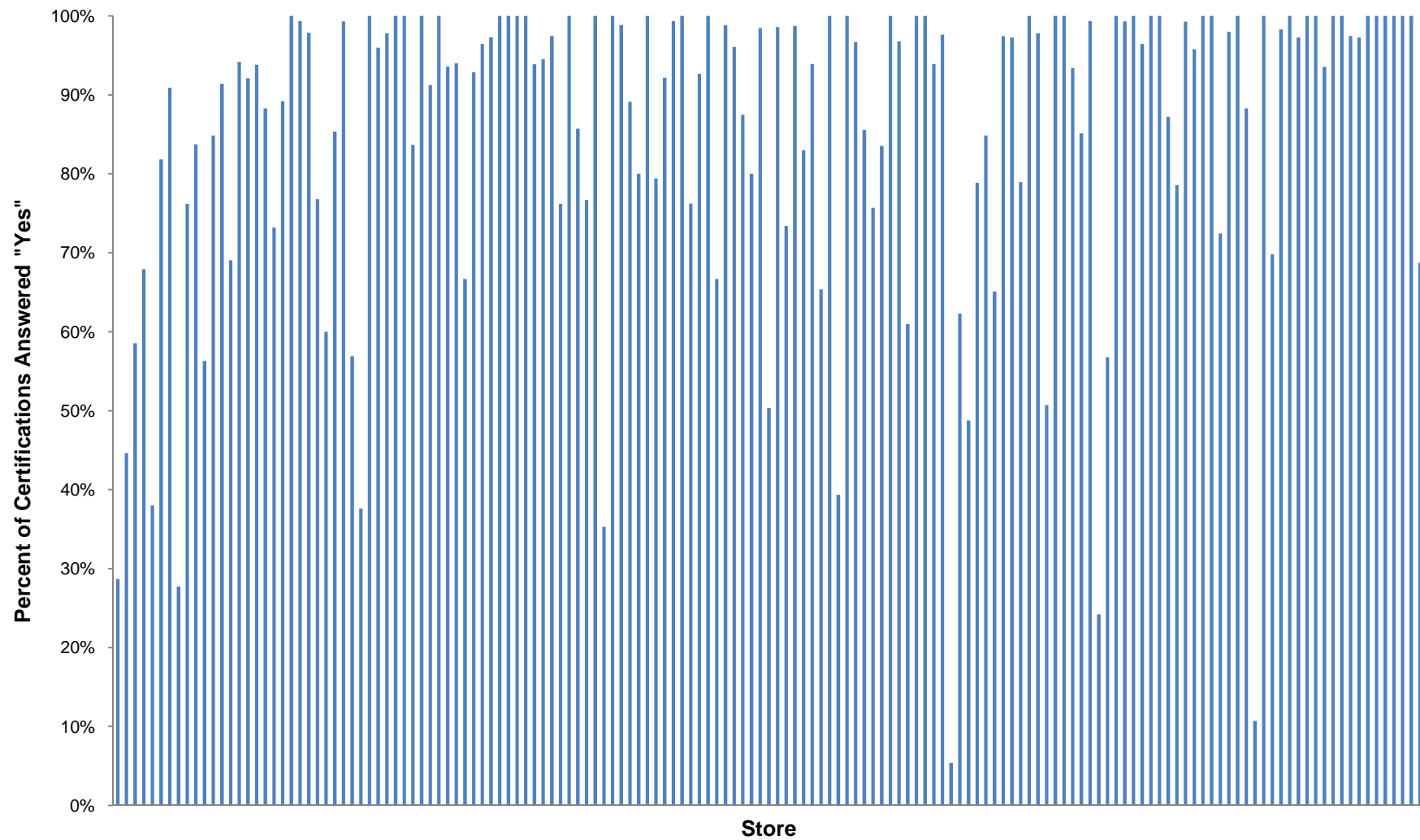
**Variation in the Percentage of 'Yes' Responses Reported on Weekly  
'Certification of Duties' Forms  
- ALL MANAGERS: Chart 2 of 3 -**



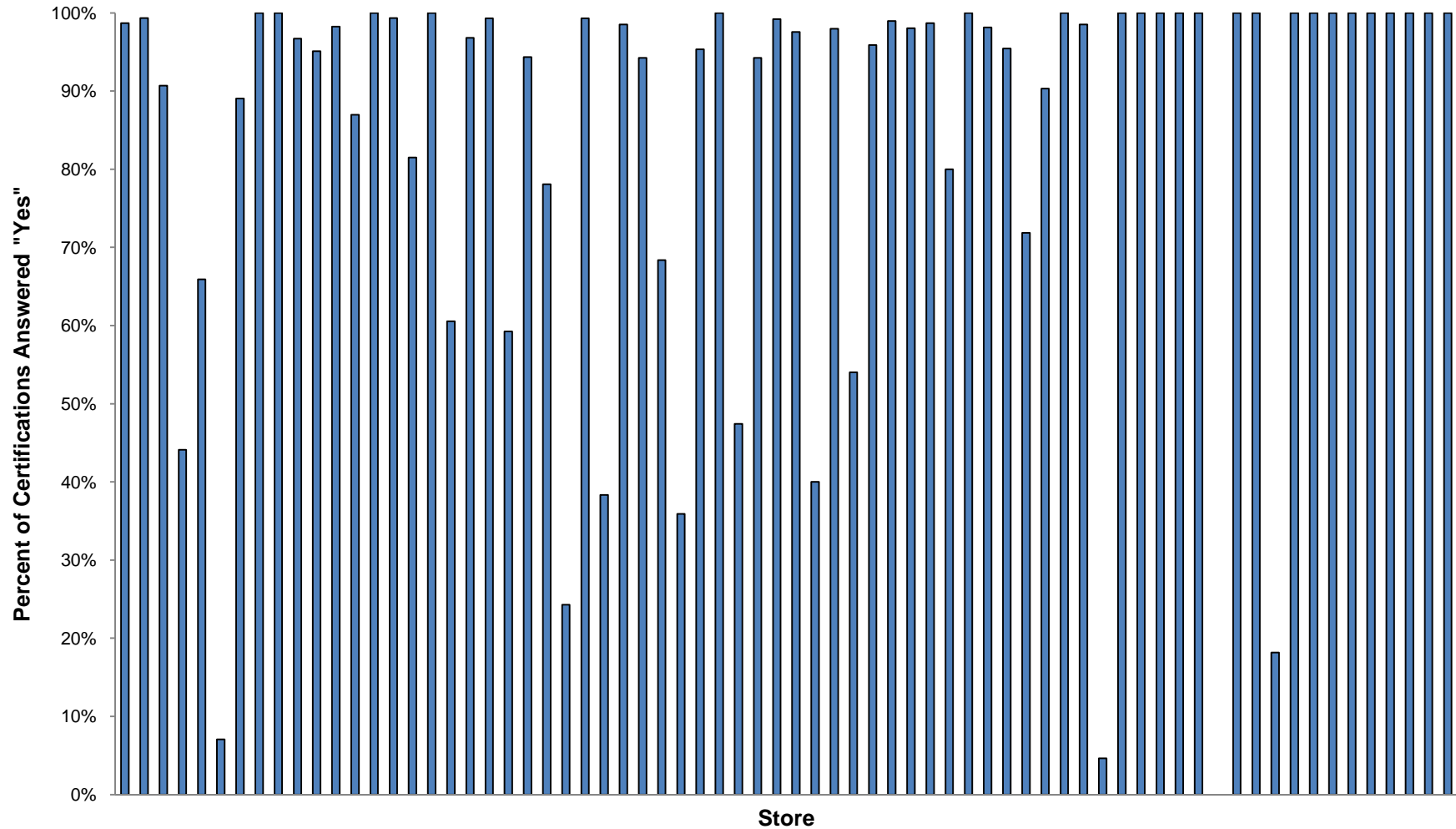
**Variation in the Percentage of 'Yes' Responses Reported on Weekly  
'Certification of Duties' Forms  
- ALL MANAGERS: Chart 3 of 3 -**



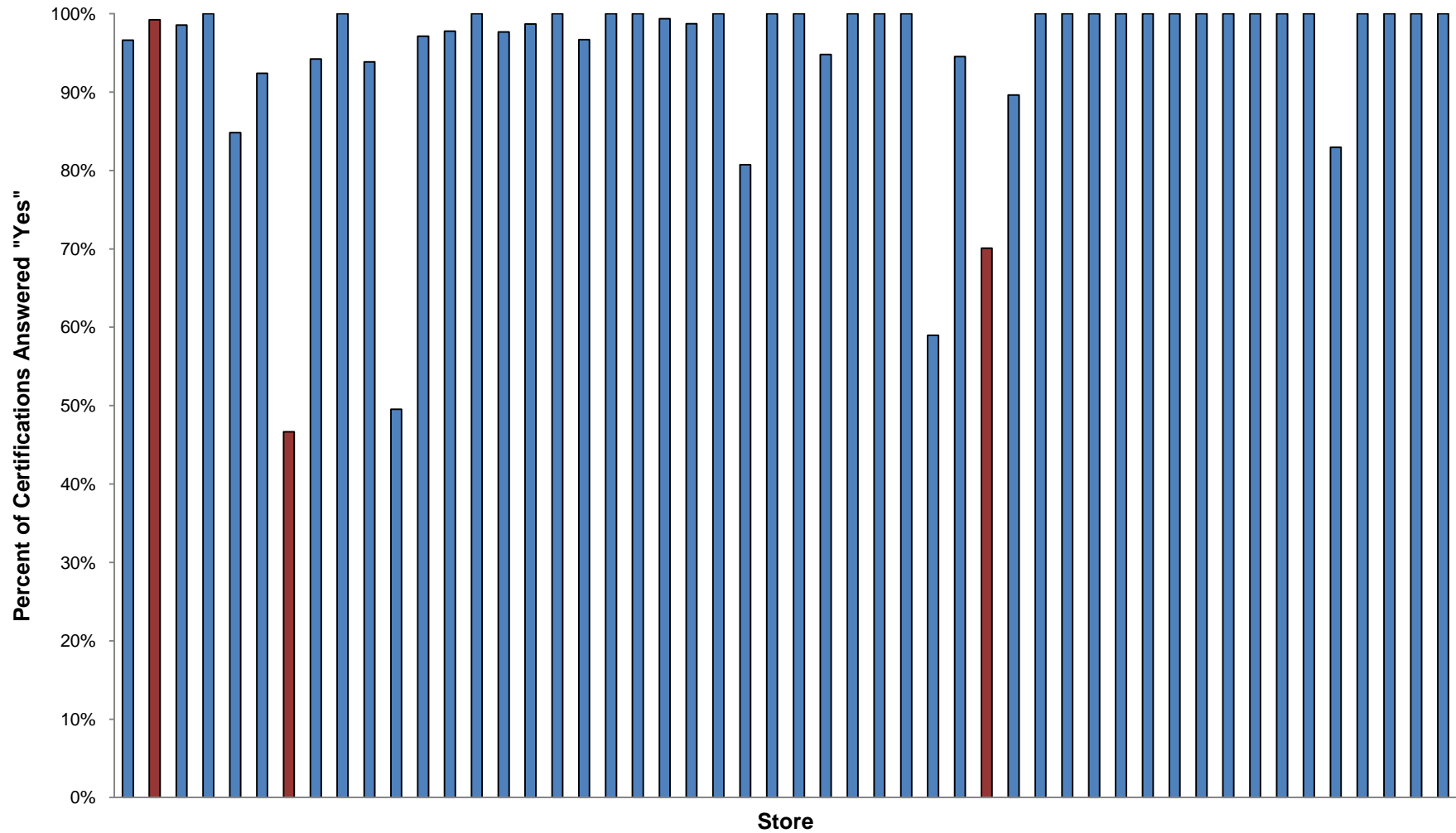
## REGION 9 - BY STORE



**Variation in the Percentage of 'Yes' Responses Reported on  
Weekly 'Certification of Duties' Forms  
REGION 13 - BY STORE**

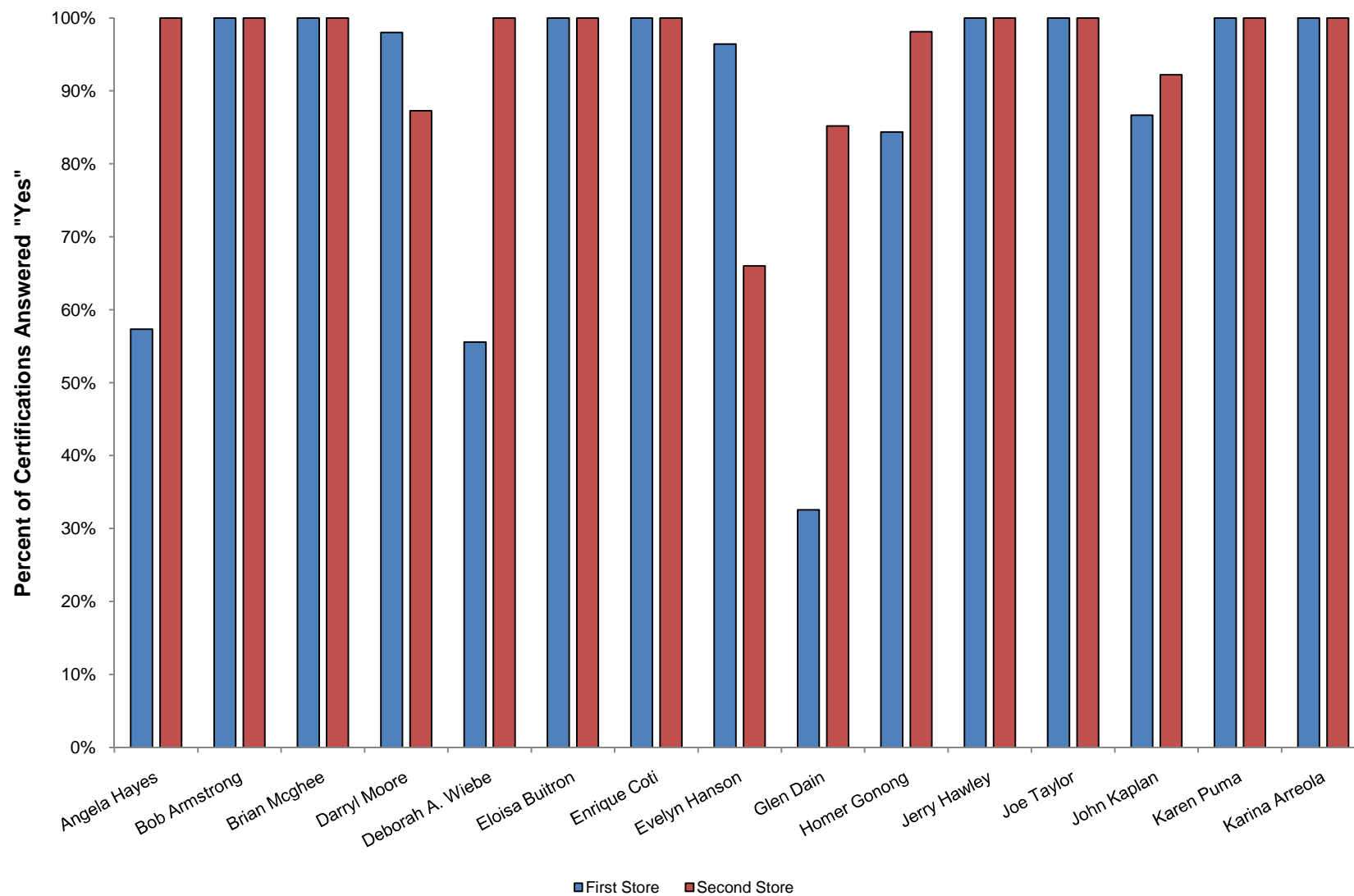


**Variation in the Percentage of 'Yes' Responses Reported on  
Weekly 'Certification of Duties' Forms  
REGION 22 - BY STORE**



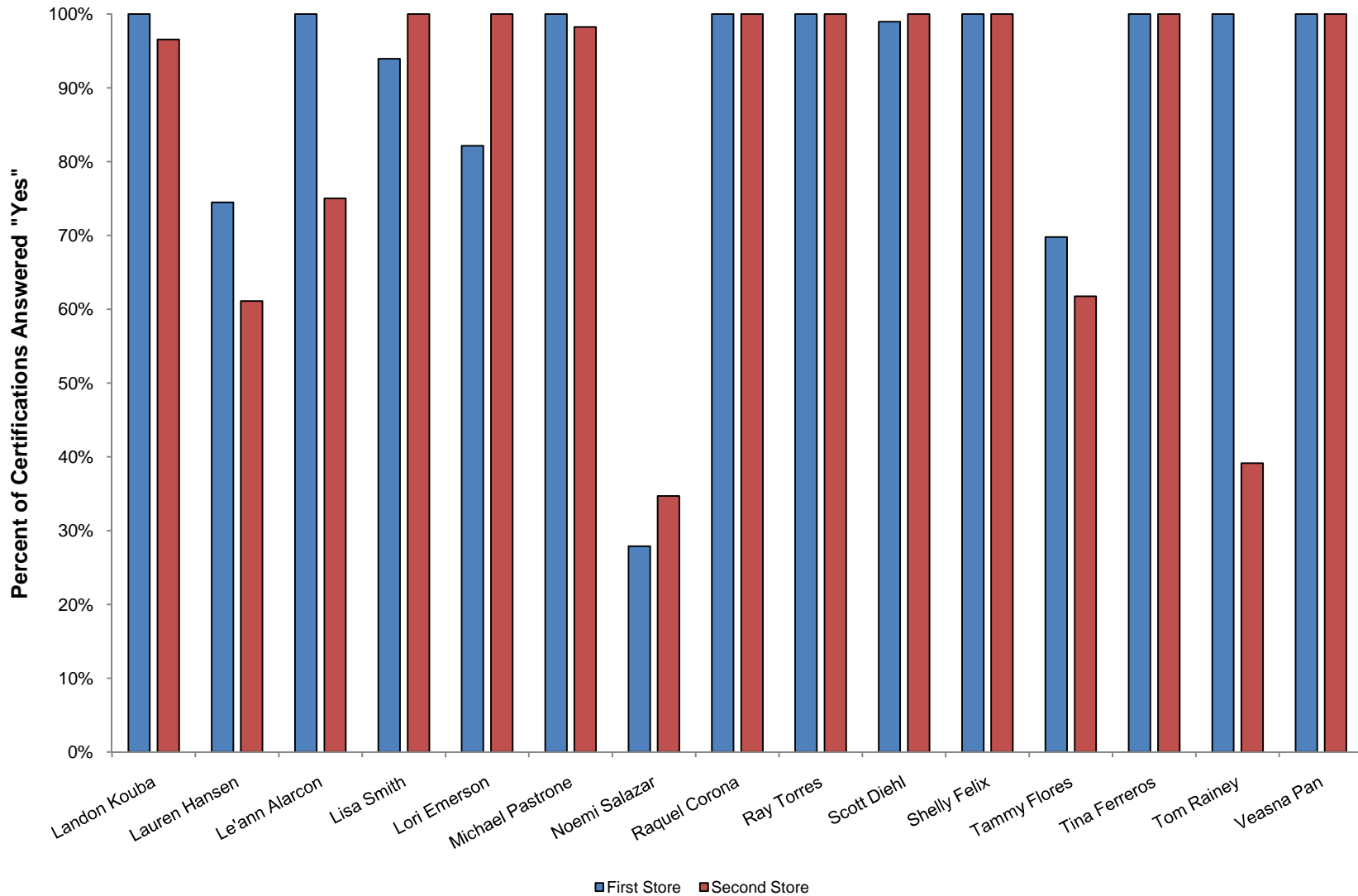
NOTE: The three stores highlighted in red are those referenced in the text of the report.

# 'Certification of Duties' Responses for SMs That Oversaw Two Dollar Tree Locations - CHART 1 of 2 -

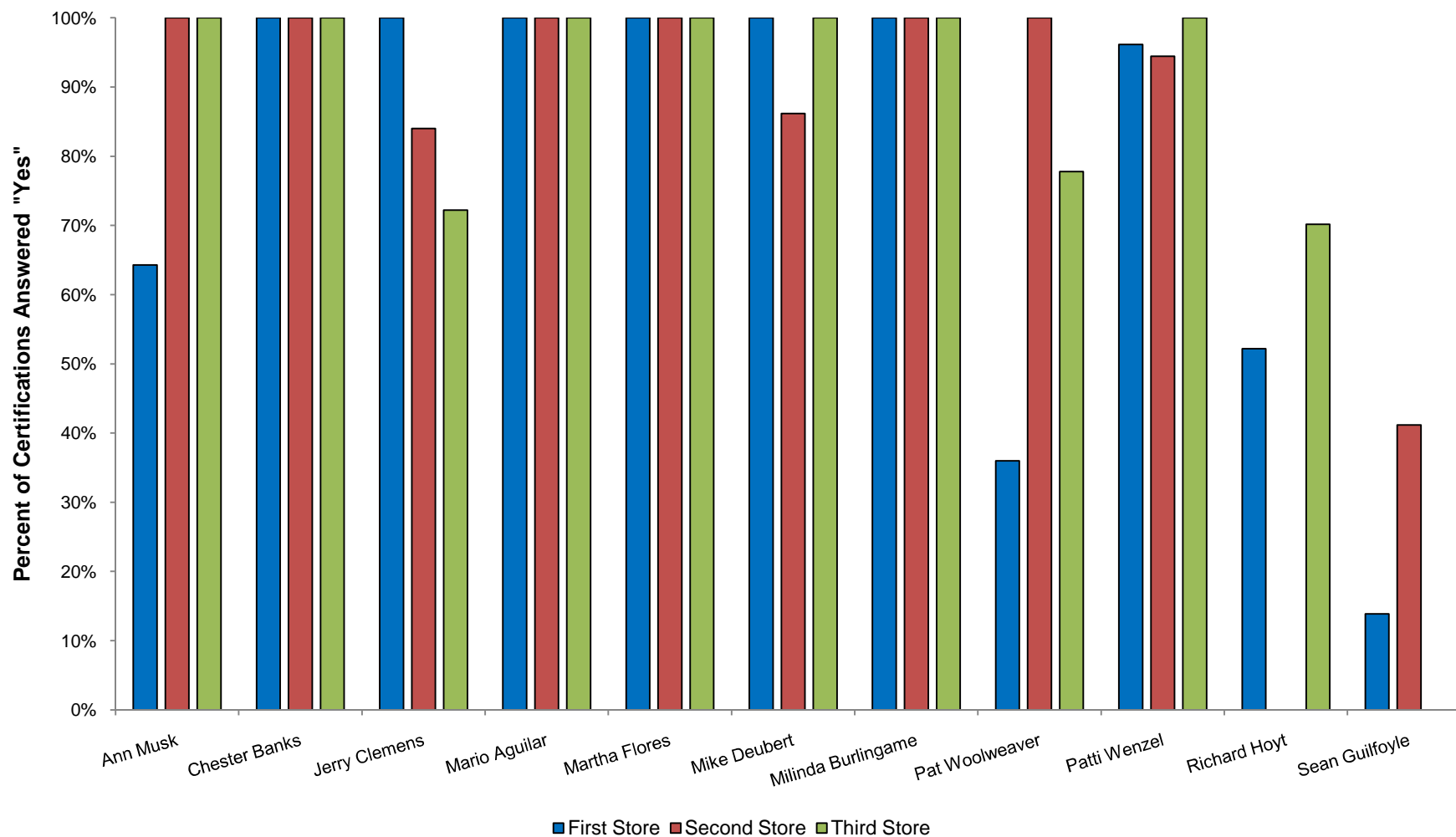




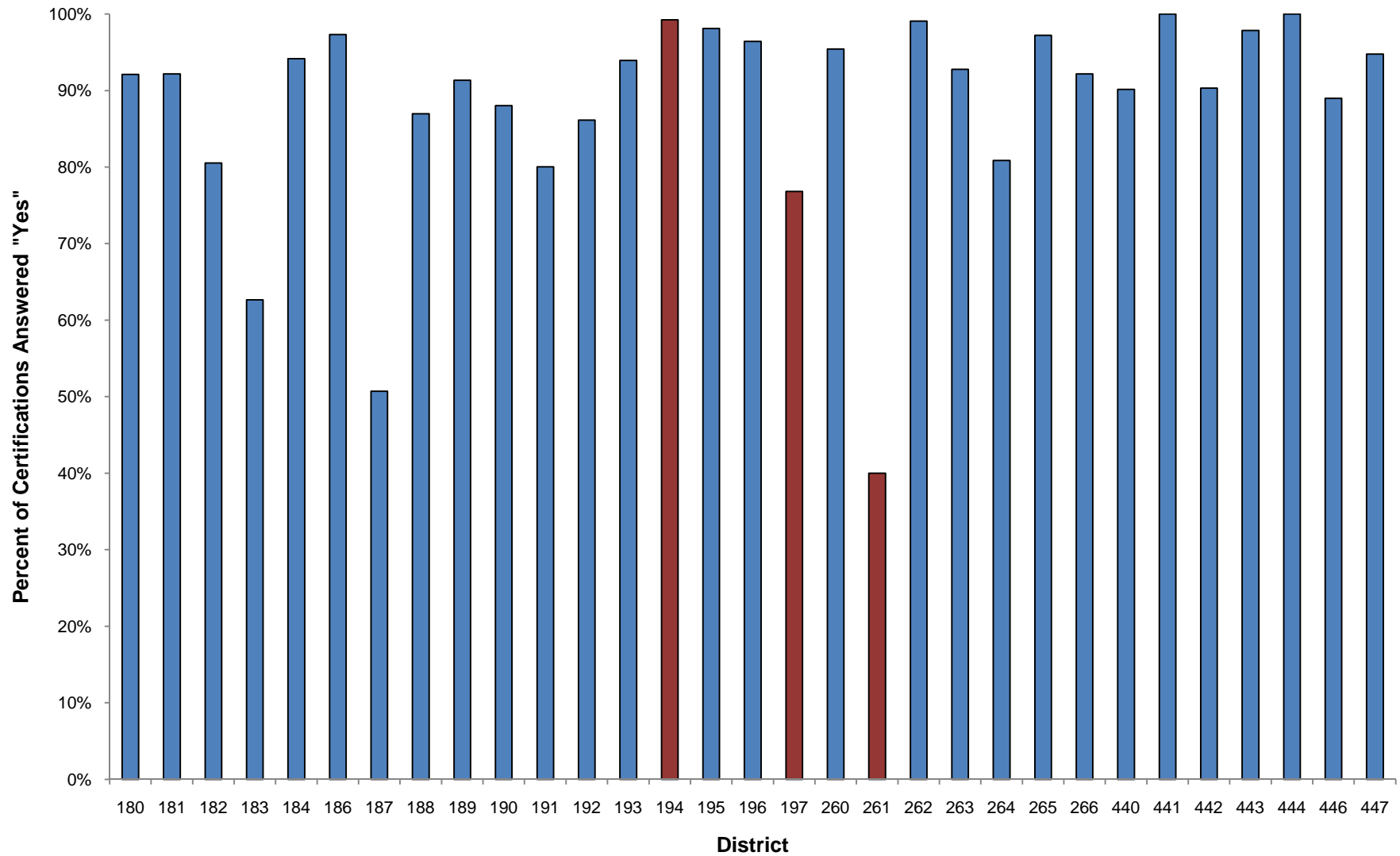
## 'Certification of Duties' Responses for SMs That Oversaw Two Dollar Tree Locations - CHART 2 of 2 -



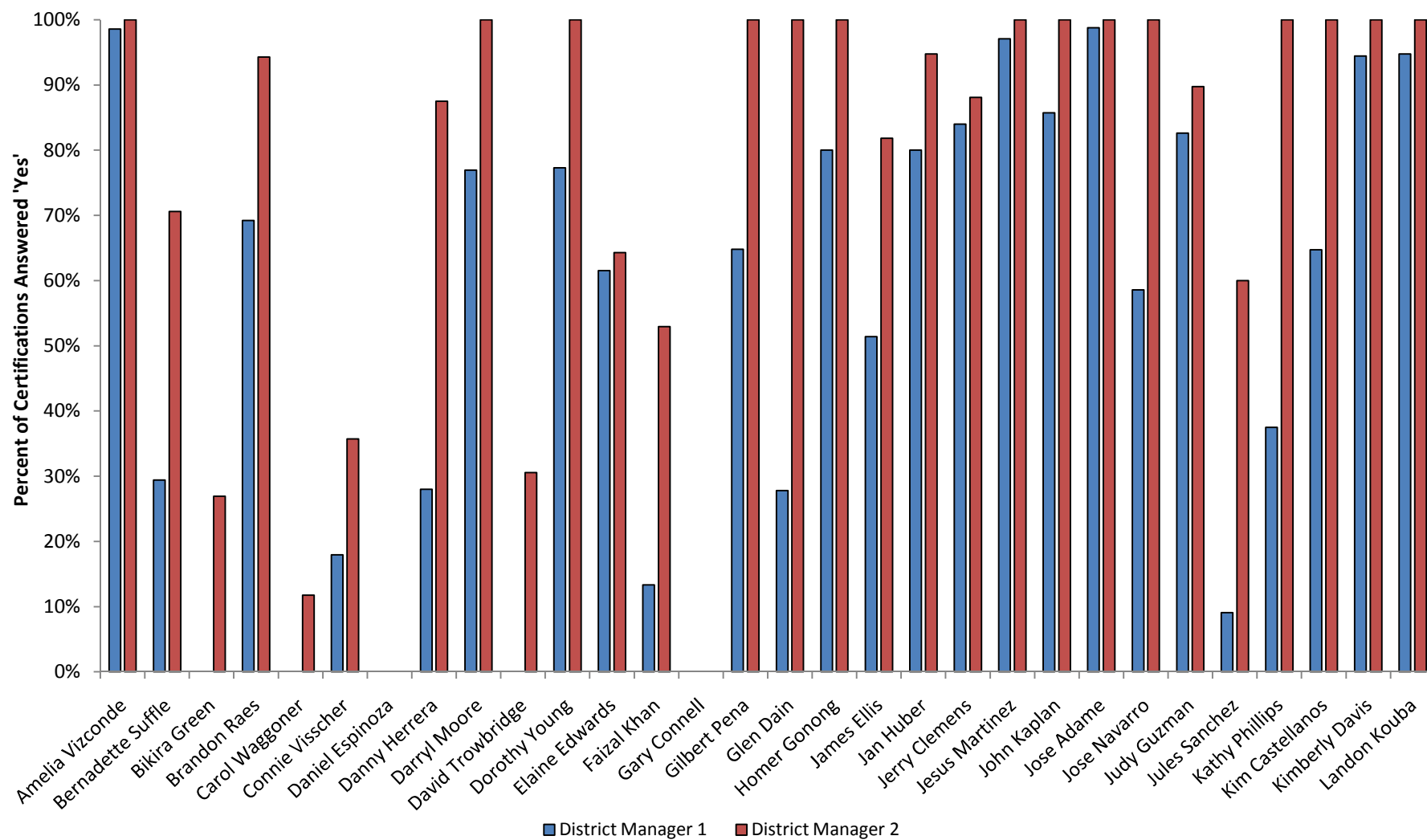
**'Certification of Duties' Responses for 11 Managers That  
Oversaw Multiple Dollar Tree Locations  
- Only 4 out of 11 Manager Have Consistent Responses Across All Three Stores -**



**Variation in the Percentage of 'Yes' Responses Reported on  
Weekly 'Certification of Duties' Forms  
- BY DISTRICT -**

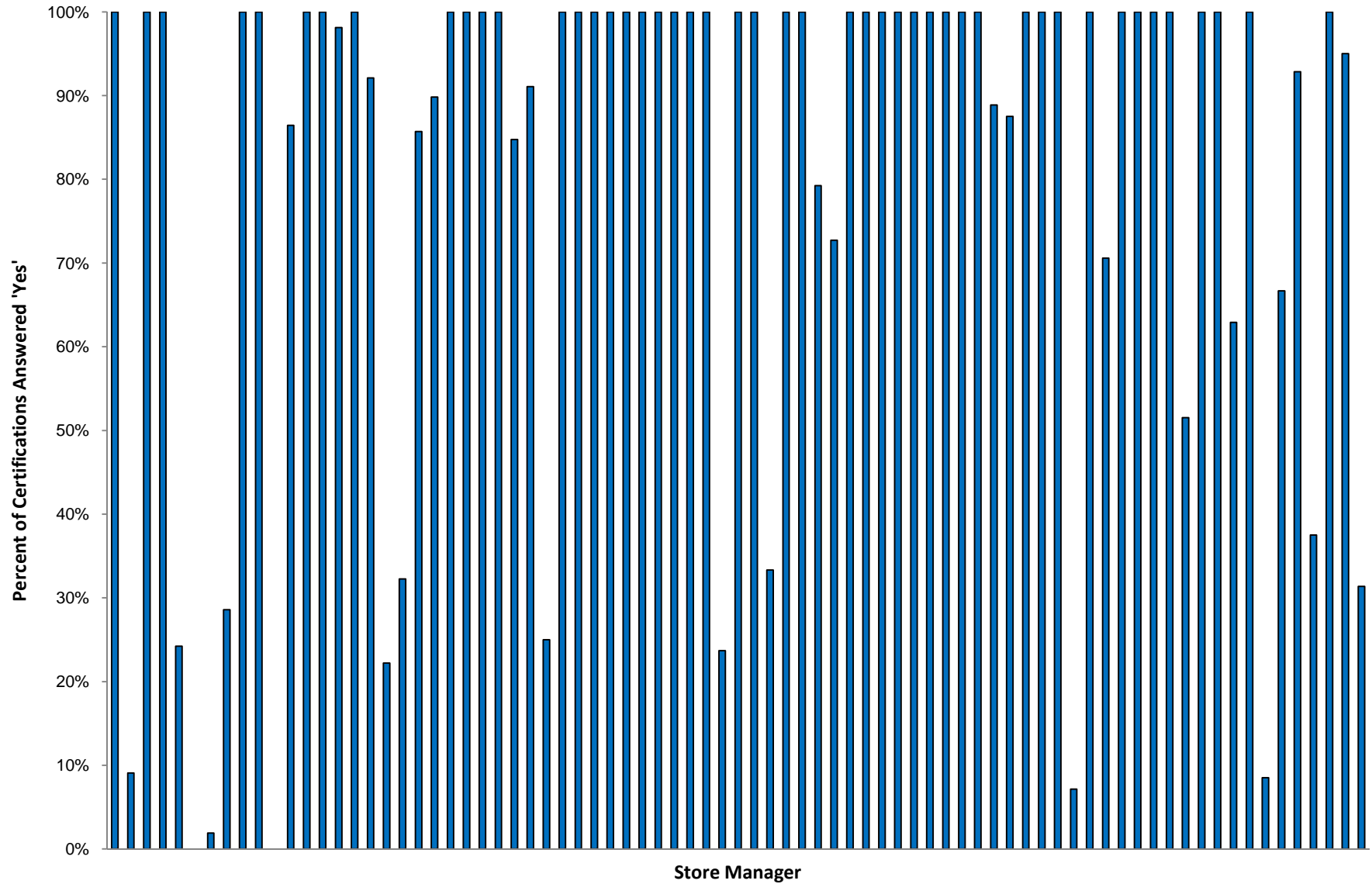


### 'Certification of Duties' Responses for 30 Managers That Worked Under More Than One District Manager



NOTE: Each SM shown in the chart worked under his/her DM for atleast 10 weeks. For display purposes, a selection of the first 30 pairs is shown here.

## Variation in 'Certification of Duties' Form Responses Among Managers in Stores with High Sales Volume Per Associate



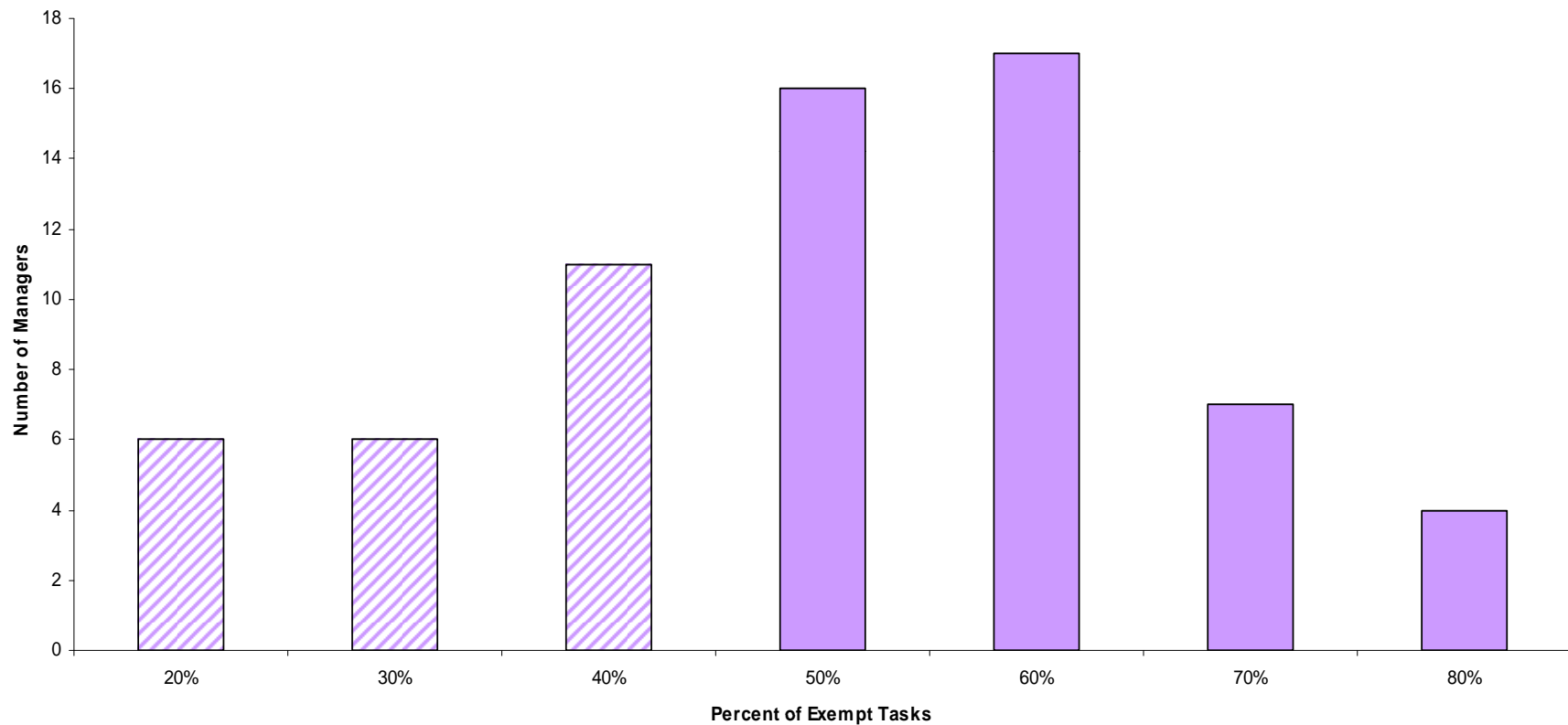
**The Effect of Changes in Store-Level Attributes and Staffing Conditions on  
Managers' "Certification of Duties" Form Responses**

Measured Attribute	Method of Measurement	Change in % of 'Yes' (Exempt) Certification Form Responses	Statistically Significant
High Proportion of Full-Time Staff	Stores in the top 25th percentile based on full-time to part-time employee ratio	8.7%	Yes
Heavy Customer Flow	Stores in the top 25th percentile based on sales volume per associate	-19.1%	Yes
Understaffed Weeks	Weeks where a store was short more than two employees	-6.4%	Yes
Understaffed Weeks	Weeks where a store was 10% under its average number of hours	-3.8%	Yes
Termination Events	Weeks where a store lost an employee	-3.6%	Yes
Termination Events	Weeks where a store lost a long-term (90+ days) employee	-4.4%	Yes

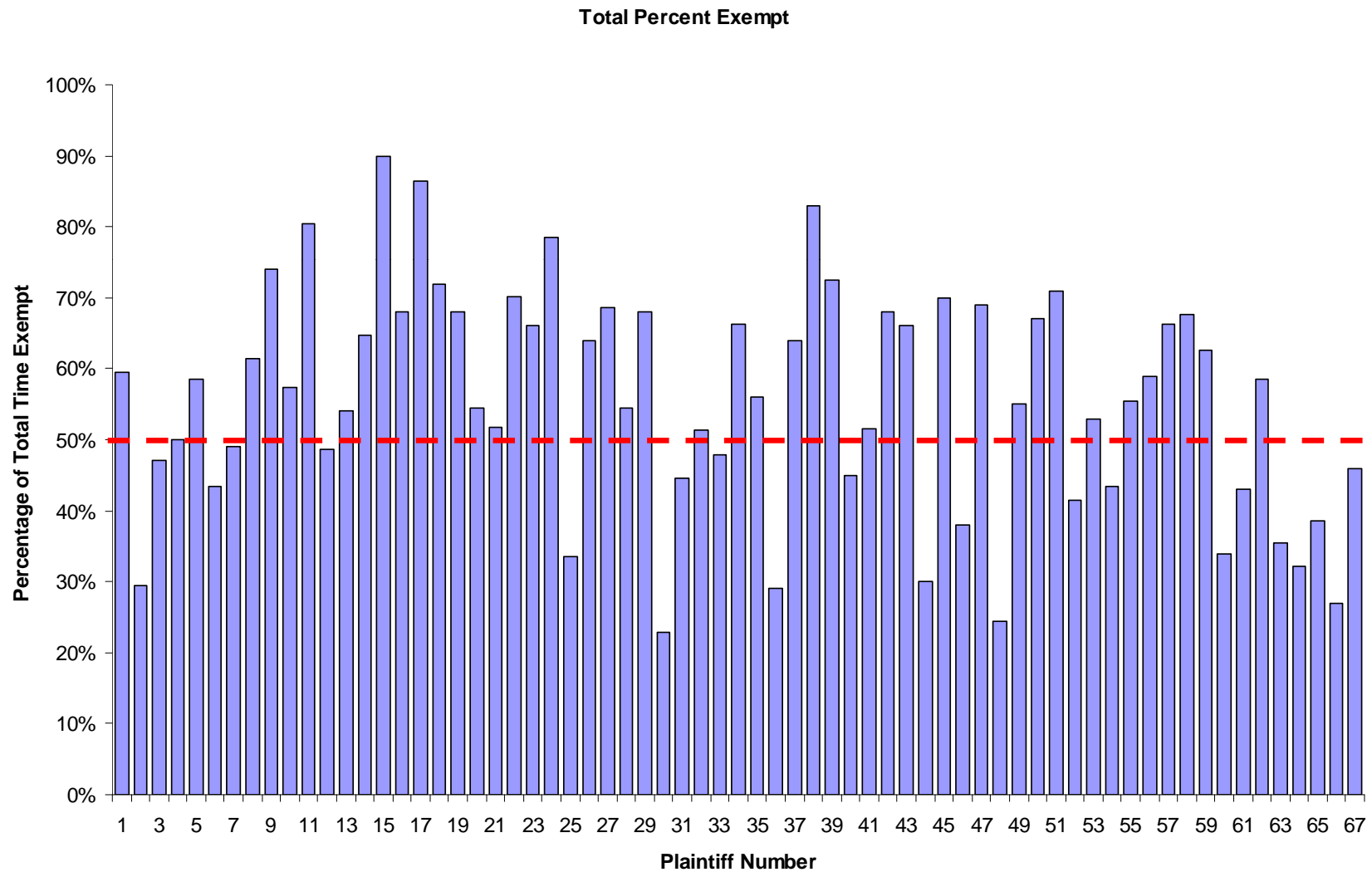
# Survey of Dollar Tree Managers

## Frequency Distribution of Percentage of Exempt Time

Frequency Distribution of Percent of Total Time Allocated to Exempt Tasks  
Solid Bars = Greater Than 50% Exempt Time

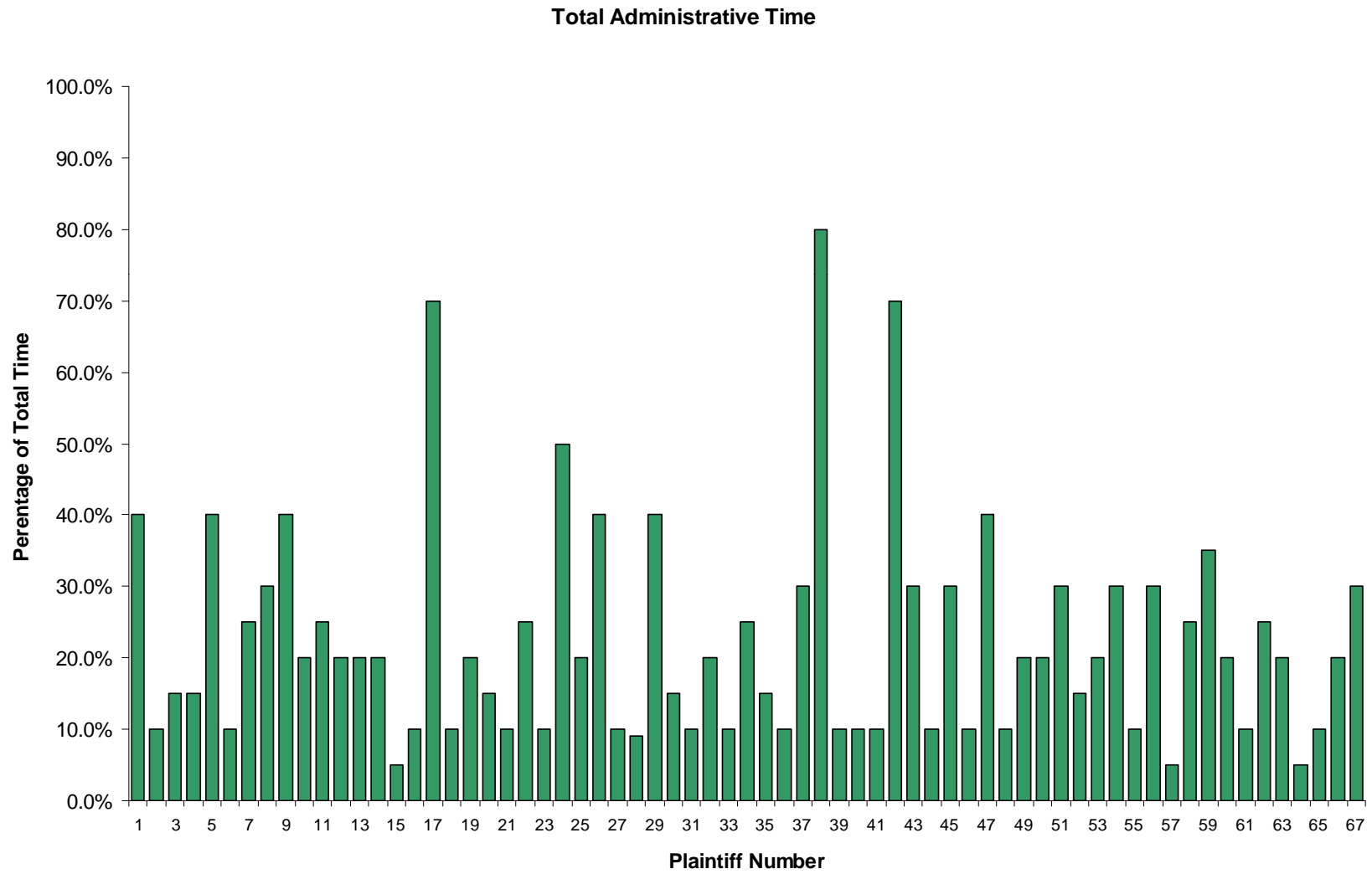


## Survey of Dollar Tree Managers The Respondent Population Showed Wide Variation in the Total Percentage Exempt Time

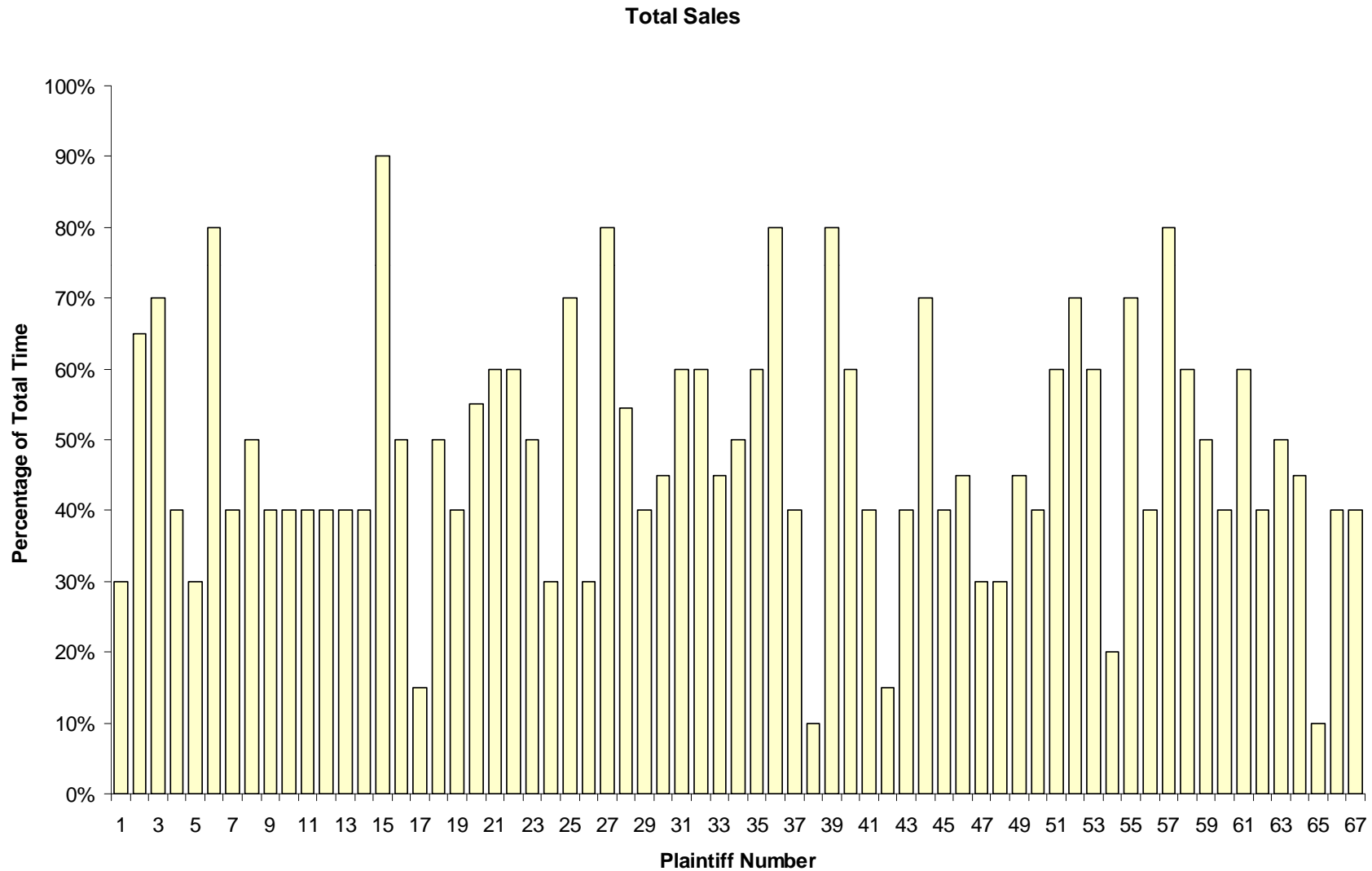




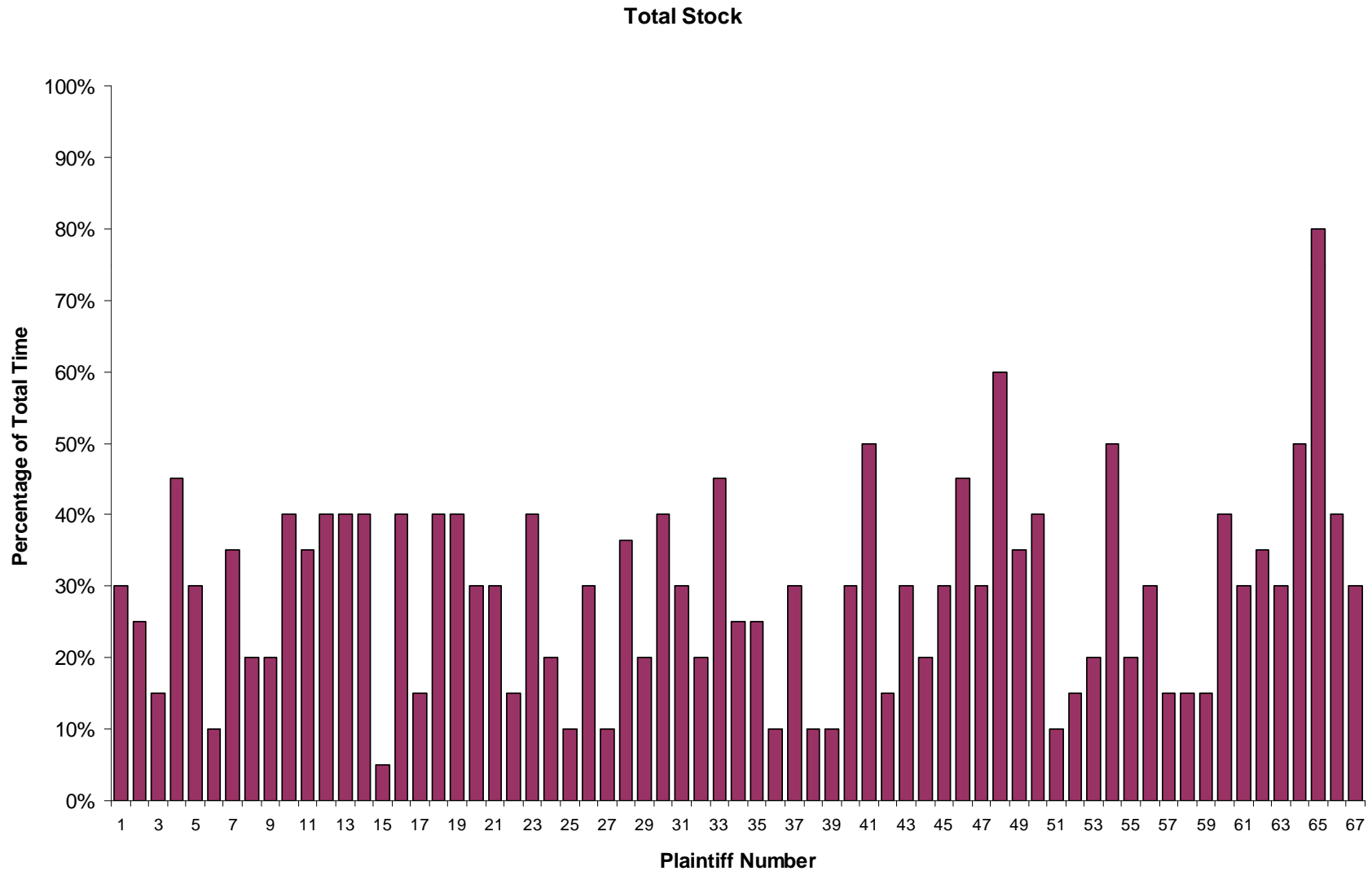
## Survey of Dollar Tree Managers The Respondent Population Showed Wide Variation In Percentage of Total Time Allocated to Administrative Tasks



## Survey of Dollar Tree Managers The Respondent Population Showed Wide Variation In Percentage of Total Time Allocated to Sales Floor Tasks



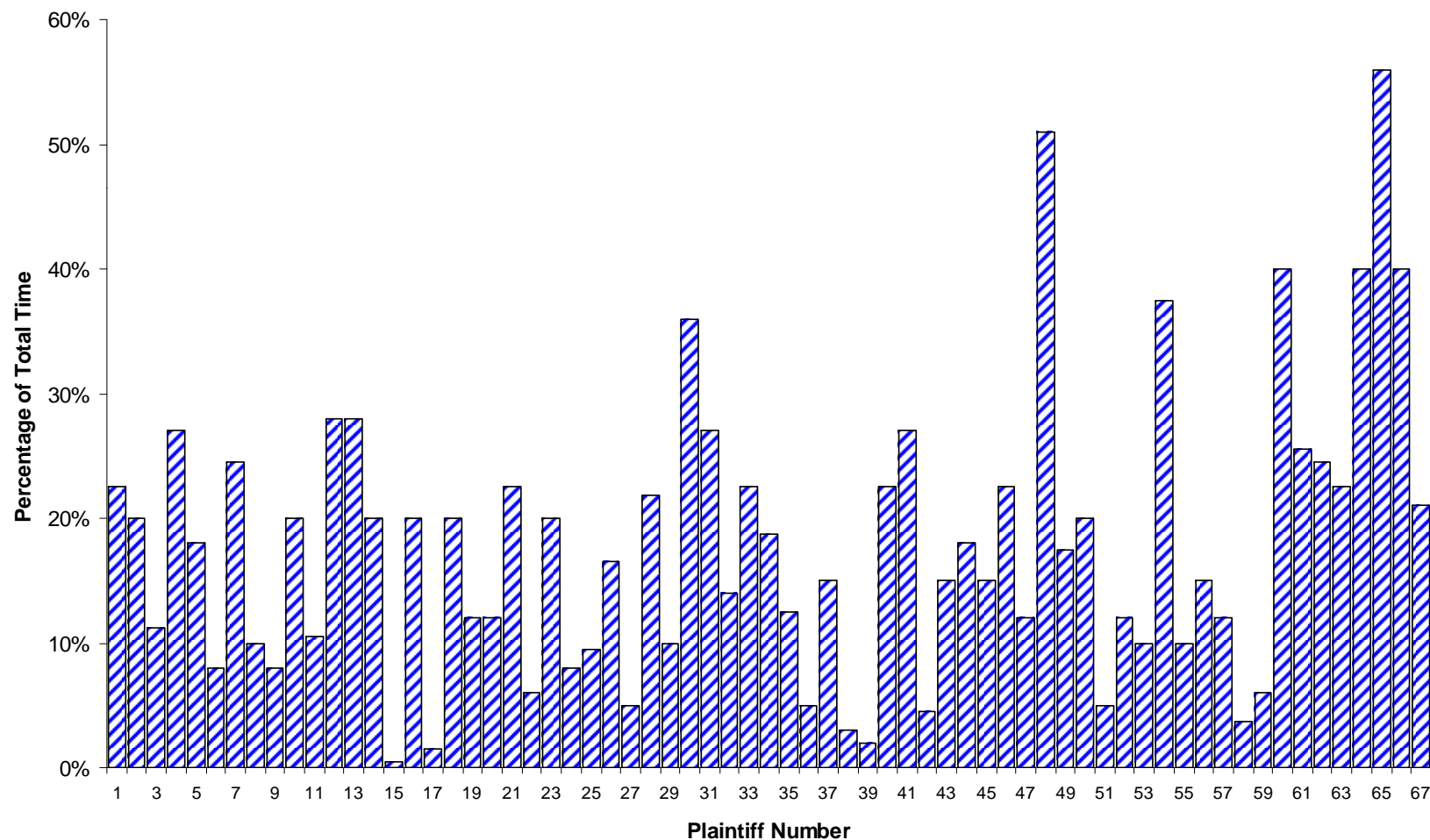
## Survey of Dollar Tree Managers The Respondent Population Showed Wide Variation In Percentage of Total Time Allocated to Stock Room Tasks



## Survey of Dollar Tree Managers

### Analysis of Survey Results Indicates Considerable Variation in Store Managers' Time Spent Unloading Trucks and Staging Freight, Organizing and Categorizing Merchandise in the Stockroom, Conducting an Inventory of the Stockroom, and Cleaning the Stockroom

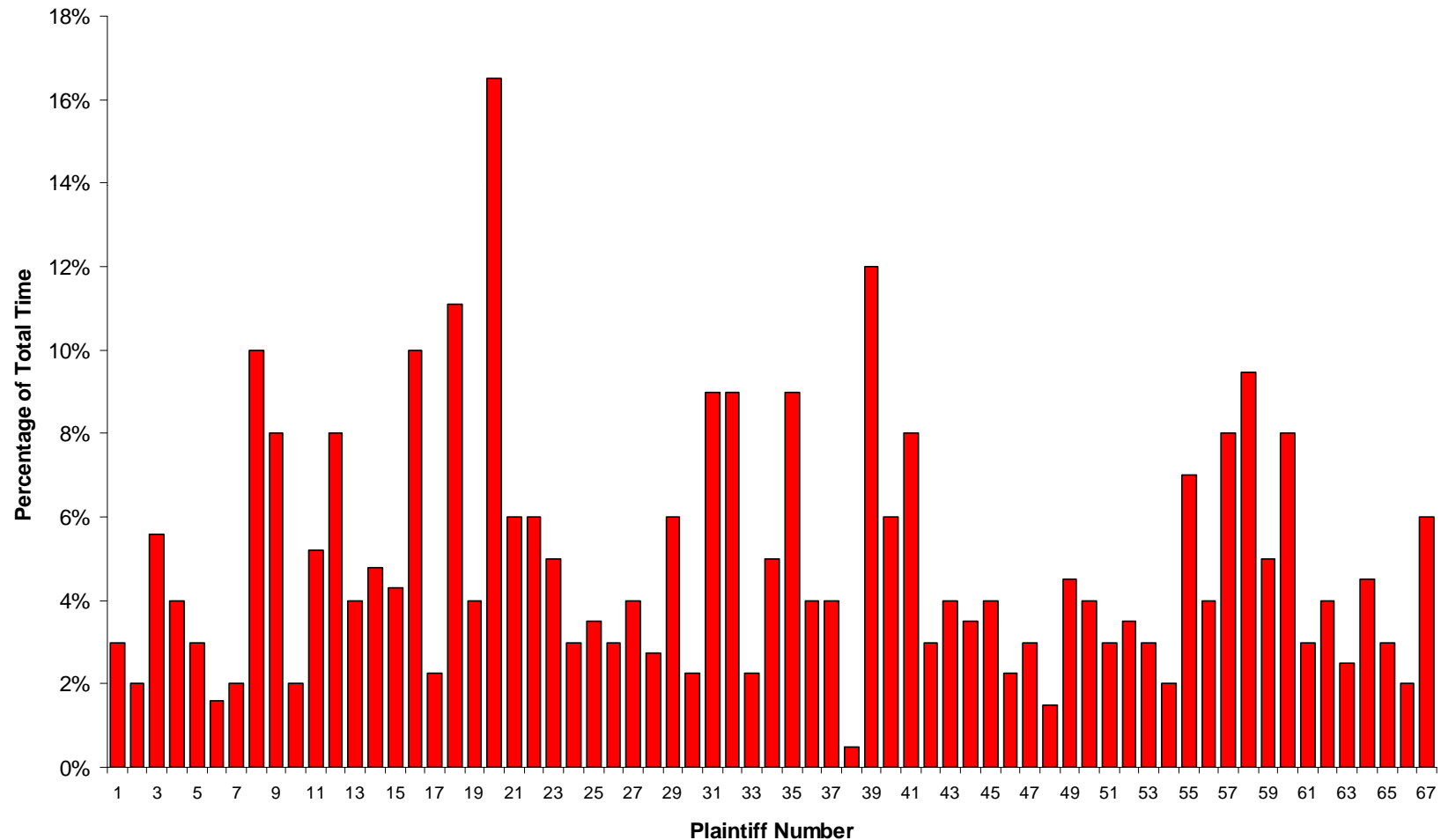
Percentage of Total Time Allocated to Non-Exempt Stock Room Tasks



## Survey of Dollar Tree Managers

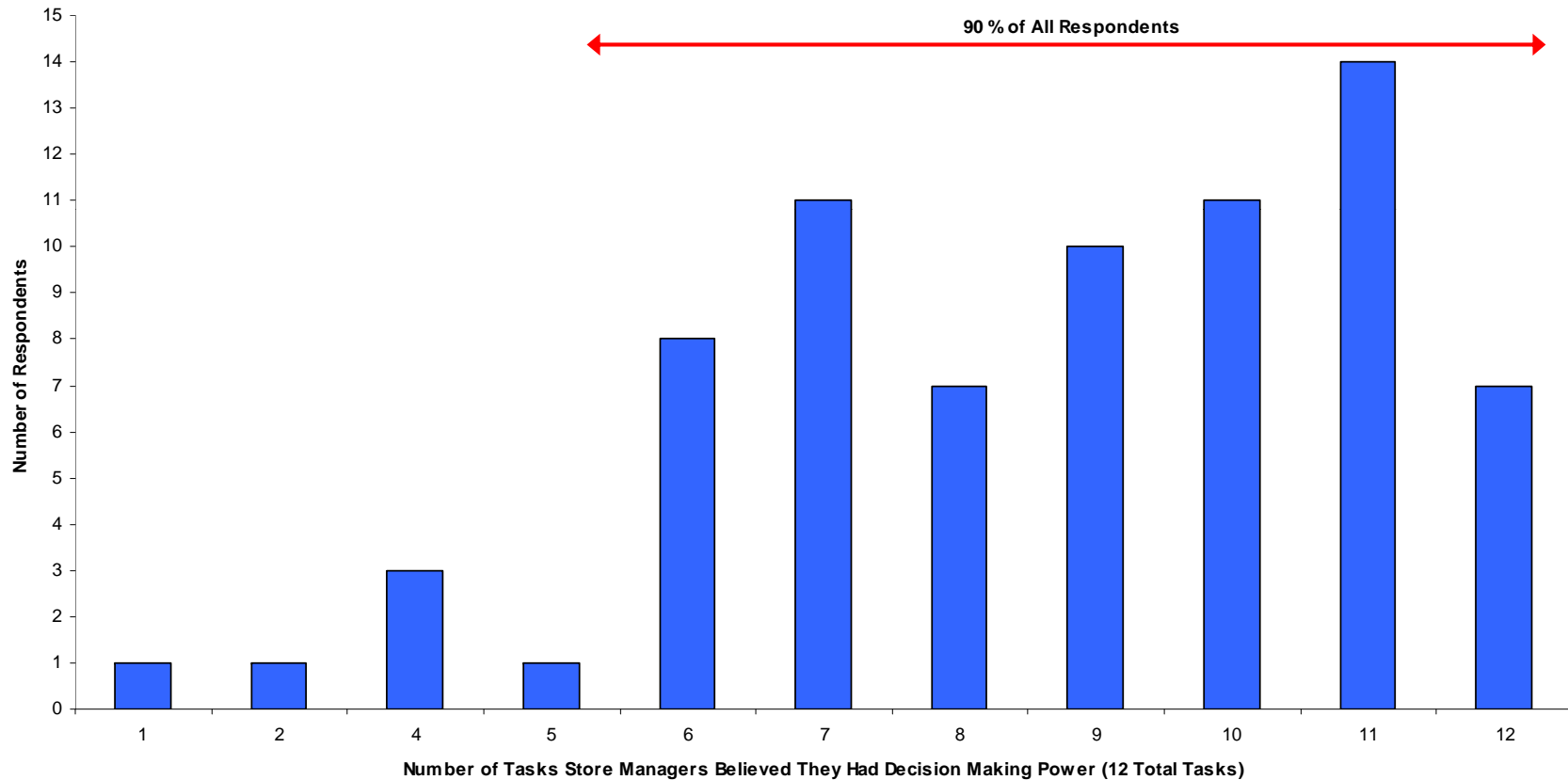
**Analysis of Survey Results Indicates Considerable Variation in Store Managers' Time Spent Supervising Cashiers and Sales and Customer Service Efforts of Employees, Approving Customer Checks and Customer Returns, Responding to Customer Complaints, and Supervising Employees' Efforts to Clean and Sweep the Sales Floor**

**Percentage of Total Time Allocated to Sales Floor Task Group 2**



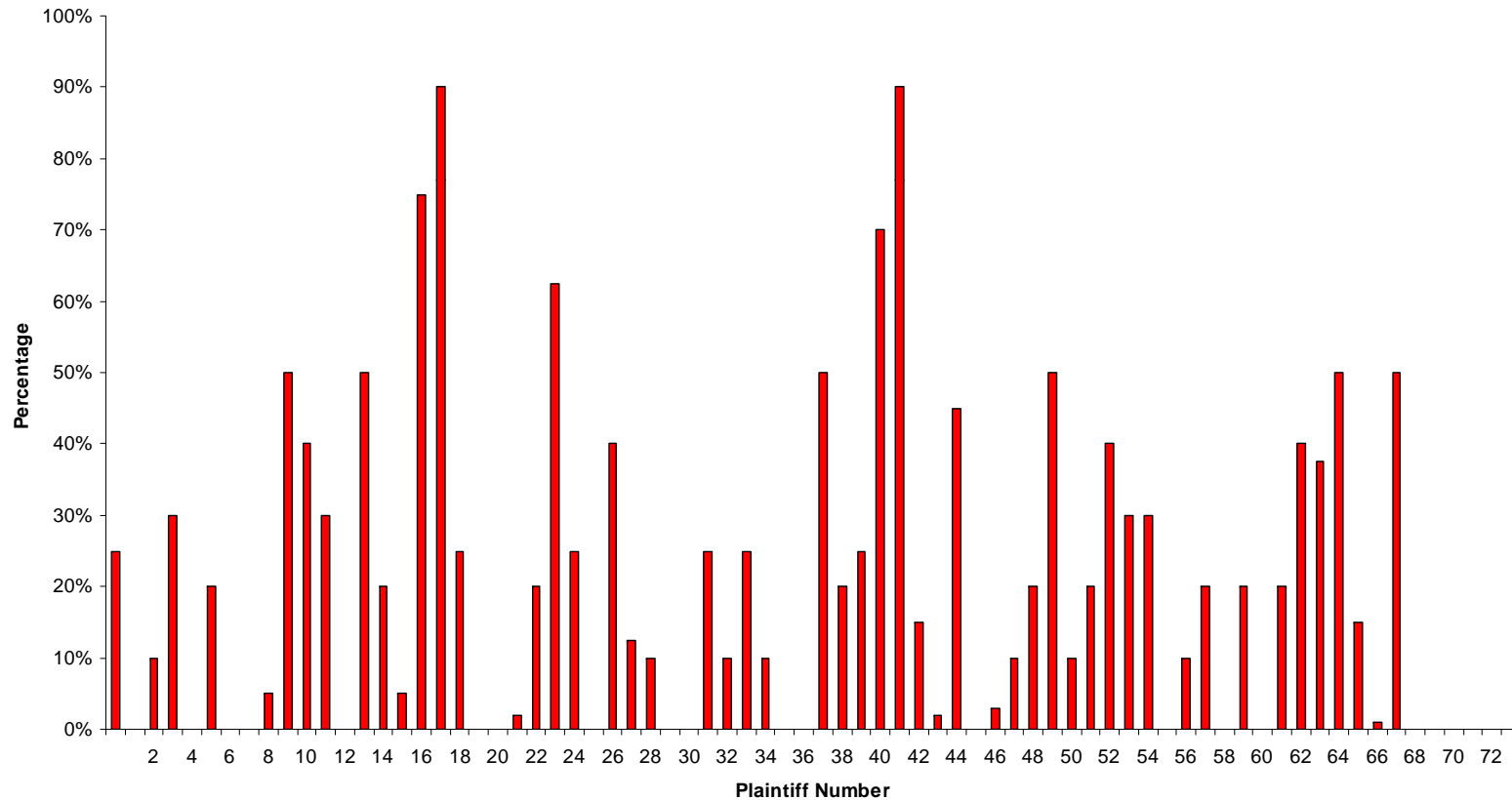
## Survey of Dollar Tree Managers

### 90% of the Respondents Answered Positively When Asked Whether They Had Power to Make Decision Relating to Day to Day Store Operations



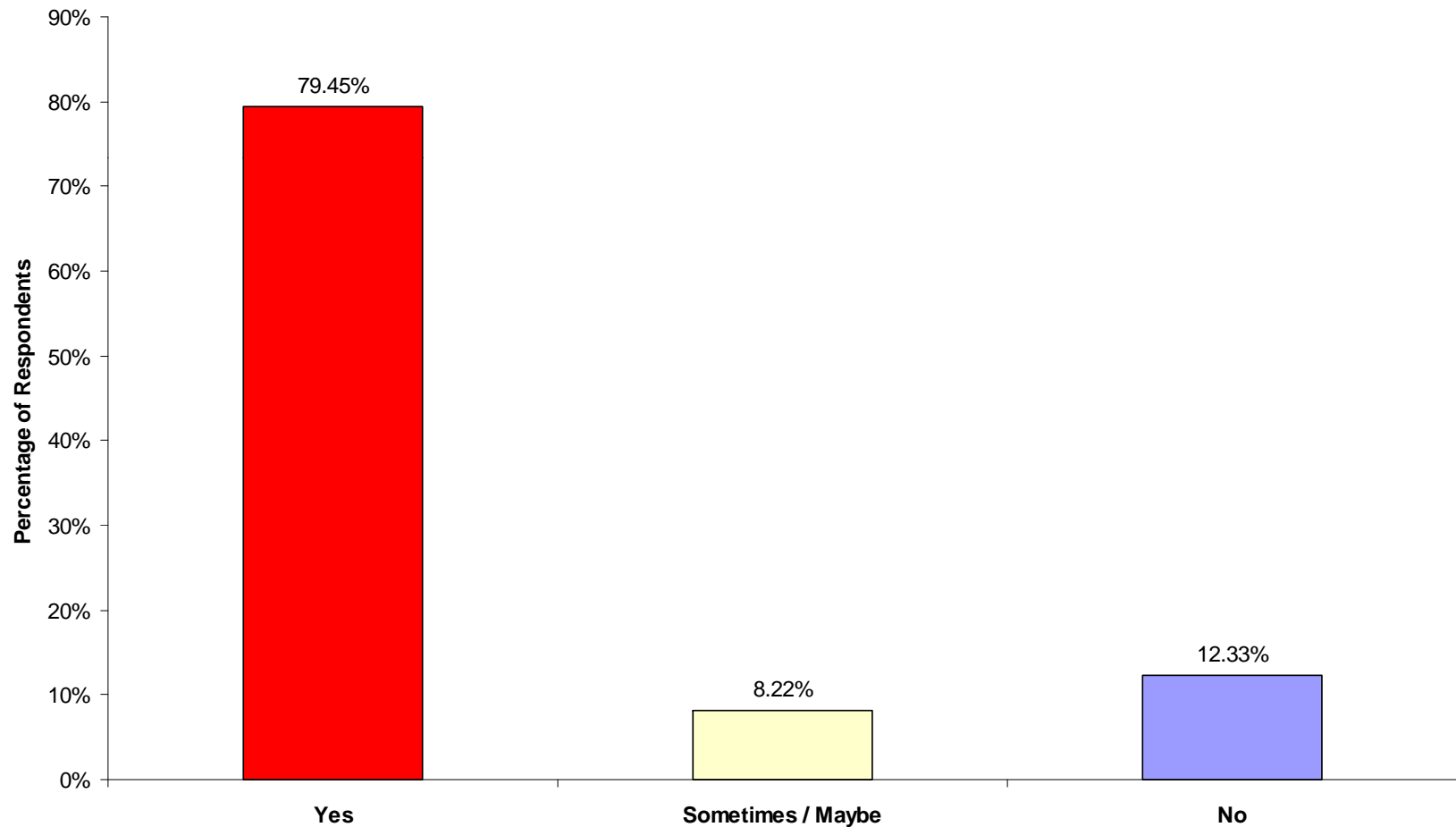
## Survey of Dollar Tree Managers Analysis of Survey Responses to Question 13b What percentage of the total promotion activities in your store have been on your initiative versus company-wide promotions?

Q13b - Authority to Implement Merchandising Activities



**Survey of Dollar Tree Managers**  
**Analysis of Survey Responses to Question 14a**  
**Do You Have the Authority to Order and Receive Merchandise That You**  
**Believe Best Fits The Preferences of The Customers At Your Store?**

**Q14a - Authority to Order Merchandise That Best Fits Preferences  
of Customers In Your Store**





# Survey of Dollar Tree Managers

